130-493 Woods
Nov. 23. 1885 Submitted on
motion to dismiss or affirm

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1008. 634 ~~534~~ 68

WILLIAM S. HASSALL, TRUSTEE, APPELLANT,

vs.

A. W. WILCOX ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

FILED OCTOBER 3, 1885.

Dec 5. Dismissed as to all
claims but Wilcox's

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1, 2, & 3 *Caption.*

In the Circuit Court of the United States, Fifth Circuit, for the Western District of Texas at San Antonio. In Equity.

C. B. WRIGHT *et al.*
vs.
THE RIO GRANDE AND PECOS RAILWAY COMPANY. } No. 24.

Be it remembered that at the May term, A. D. 1885, of the circuit court of the United States, fifth circuit, for the western district of Texas, held at San Antonio, in said district, Honorables Don A. Pardee and E. B. Turner, judges of said court, amongst other things, the following proceedings were had in said court in the cause of C. B. Wright *et al. vs.* The Rio Grande and Pecos Railway Company, in relation to the claim number one (No. 1) of A. W. Wilcox *vs.* The Rio Grande & Pecos Railway Company, as follows:

4 *Original Petition. Filed April 14th,* 1884.

In the Circuit Court of the United States for the Western District of Texas. Of October Sessions, 1884.

Between—

C. B. WRIGHT, a Citizen of the State of Pennsylvania,
and
THE RIO GRANDE AND PECOS RAILWAY COMPANY, a Corporation Created and Existing under the Laws of the State of Texas, and the Mercantile Trust Company of the City of New York, a Corporation Created and Existing under the Laws of the State of New York, Defendants. } No. 24.

Your orator complains and says:

1. That he is a citizen of the city of Philadelphia and State of Pennsylvania, and that he brings this his bill of complaint on behalf of himself and all other creditors in a similar position, who may hereafter join the proceeding and contribute to the expenses thereof against the Rio Grande and Pecos Railway Company, the defendant in this case, who is a corporation created by and existing under the laws of the State of Texas, and also the Mercantile Trust Company of the State of New York, a corporation created by and existing under the laws of the State of New York, and domiciled in
5 the city of New York.

2. The Rio Grande and Pecos Railway Company, defendant, is the owner of very extensive and valuable coal lands in Webb county, in the State of Texas, and has recently constructed a railroad in the State of Texas from Santo Tomas to Laredo. The business of the said company is that of a railway and transportation company and of a miner of coal. There has recently been expended a very large amount of money upon opening the coal beds and erecting the necessary appliances for mining and transporting the same to market, and the principle business upon the railroad is the

transportation of the coal thus mined. The value of the assets of the company consists largely in the fact that the coal mines and the railroad appertenant thereto are owned by the same corporation, and any separation of the two properties of the company would be fraught with disaster to its creditors and lessen the aggregate value of the two very materially.

3. Your orator further avers that the corporation defendant, on or about the 1st day of June, 1882, issued bonds to the amount of $600,000, payable in gold coin of the United States in thirty years from the date of issue, on the 1st of June, 1912, and bearing interest at the rate of six per cent. per annum, payable semi-annually, on the first days of June and December of each year, on presentation of the coupons annexed to the bonds as they respectively become due.

6 These bonds were secured by a mortgage of all the property, both real and personal, of the said company, including its franchises, coal, coal mines, and rolling stock, executed on the 15th day of May, 1882, by the said company unto the defendant, the Mercantile Trust Company of the State of New York. It is provided by the said mortgage, a copy of which is annexed as an exhibit hereto, that, in case default shall be made upon the payment of any interest upon any of the aforesaid bonds, according to the tenor thereof, or of the coupons thereto annexed, and such default shall continue for the period of twelve months (or before the expiration of twelve months, if the company consent), it shall be lawful for the said trustee, its successor or successors in the said trust, personally or by attorney or agent, to enter to or upon the premises thereby conveyed, and to hold the same and conduct the business thereof, and to receive the tolls and income and profits thereof, and to apply the moneys arising therefrom to the payment of interest upon the said bonds, in the order in which the same shall be due, and, further, that, in case of such default, the principal of all of the said bonds secured thereby shall, at the election of the trustee, become immediately due and payable, whereupon it shall be lawful for the said trustee after entry to sell and dispose of the property and premises thereby conveyed by public sale.

4. Your orator further avers that he is the holder of bonds
7 secured by the above-mentioned first mortgage to the extent of $121,000, and that the interest due on all of the said bonds for the month of December, 1883, although the coupons therefor were duly presented to the said company defendant, and demand made upon them for payment, has not been paid, nor any part thereof, and the same is in default.

5. And your orator further avers that he has recently learned that there has been incurred by the said corporation defendant a very large indebtedness, the exact amount of which your orator is unable to specify, but amounting to between twenty and forty thousand dollars, in and about the construction and equipment of the said railroad, and that under the laws of the State of Texas the said indebtedness is entitled to a first lien upon the road and its franchises and property in preference to the first-mortgage bondholders for a period

of twelve months after the completion of the same. And your orator avers that long anterior to the expiration of twelve months from the completion of the said railway suits were brought upon many, if not upon all, of the labor and material claims above mentioned, and judgment has in some instances been had thereon, upon which executions have been issued, which are now pending against the said company, and under which, unless some relief is afforded by this honorable court, a large portion or portions of the property
8 of the company will be diverted by sheriff sales and the property of the company thus seperated and its aggregate value greatly impaired.

6. And your orator further avers that there is outstanding a large indebtedness, in addition to that hereinbefore set forth, unsecured, and upon which suit will shortly be brought, unless the property be put in the hands of a receiver by this honorable court.

7. Your orator avers, therefore, that the said Rio Grande and Pecos Railway Company is at present insolvent and unable to meet the interest upon its fixed charges or its ordinary debts and obligations, and that its roads and franchises and rolling-stock are all liable to be swept away upon liens or judgments, which, under the laws of the State of Texas, are prior to the liens of the mortgage bonds held by your orator, and that the same will be so swept away unless prevented by the action of this honorable court, in which case the whole of the property, which is of great value and extent would be destroyed, not only so far as its usefulness to the public is concerned, but so far as it is a security or pledge to the holders of the mortgage bonds above mentioned, so ther- is urgent necessity for the interfear-ance of this honorable court to protect the property from suits and executions, and to preserve it as a whole so that its business may be continued to be carried on and its income and assets applied to the payment of its debts in due order for the general advantage
9 of all its creditors, and more especially to enable provision may be made by the first mortgage bondholders for the discharge and payment of the obligations held by laborers and materialmen and others, who, under the laws of the State of Texas, are entitled to a lien upon the said property prior to that of the first mortgage bondholders.

Your orator therefore needs equitable relief as follows:

First, That the rights of your orator and all other creditors of the said Rio Grande and Pecos Railway Company in and to the property, both real and personal, may be ascertained and declared, and a decree be entered by your honorable court directing the Company to pay the same.

Second, And that whereas doubts exists whether the defendant, The Mercantile Trust Company, of the city of New York, which is a citizen of New York and domiciled therein, can enter upon and take possession under the laws of the State of Texas of the mortgaged property of the said Railway Company; that your honorable court will appoint a receiver to enter upon and take possession of the said property of the said Railway Company in the meantime and until the further order of the court in the premises, with such power

and authority in regard to the preservation and use of the same as to this court shall seem best adapted to protect the interest of all persons having any interest therein.

10 Third. General relief. To the end, therefore, that the said defendant may show why your orator should not have the relief hereby prayed, may it please your honorable court to issue a writ of subpœna, &c.

GEORGE BEDDLE,
For the Complainant.
C. B. WRIGHT.

Endorsed: No. 24. October sessions, 1884. Circuit court of United States, western district of Texas. C. B. Wright, plaintiff, *vs.* The Rio Grand and Pecos Railway Company and the Mercantile Trust Company of the City of New York, defendants. George Beddle, for plaintiff. Filed April 14th, 1884. W. C. Robards, cl'k.

Exhibit to Bill. Filed April 14th, 1884.

Rio Grande and Pecos Railway Company. First Mortgage.

This indenture, made this — day of May, in the year of our Lord one thousand eight hundred and eighty-two, by and between the Rio Grande and Pecos Railway Company, a corporation duly organized and existing under the laws of the State of Texas, one of the United States of America, hereinafter called the company, and

11 the Mercantile Trust Company, hereinafter called the trustee, witnesseth:

That, whereas, the Company has the franchise to be a corporation under the laws of said State of Texas, and has the right to construct, has partly constructed, is now constructing, and will complete and put into operation as soon as practicable the following line of railway, the same being a part of the line covered by its franchise, to wit:

1. Beginning at or near Laredo, in the county of Webb, in the State of Texas, and running up the left bank or Texas side of the Rio Grande river through the counties of Webb and Maverick, by the most practicable and eligible route to the town of Eagle Pass, in said county of Maverick, in the State of Texas, with the right to connect with any line in the United States, and also the right to build branch lines; and also the right to construct and maintain docks, wharves, elevators, and warehouses in connection with said lines.

And whereas the company expects to construct, maintain, and operate other railways and branches and extensions thereof; and whereas, for the purpose of obtaining means to aid in the construction, equipment, and operation of said lines of railway, to pay interest during construction, to purchase or redeem any bonds of the company which at any time may be outstanding, and for the

12 general purposes of said corporation, the company desires to execute and sell its first mortgage bonds, to be issued from time to time in different series, bearing such dates and rates of in-

terest and payable at such times as the directors of the company deem advisable, but the total amount of all said bonds at any time outstanding not to exceed $20,000 for each mile of constructed railway. The said bonds shall be issued only upon the delivery to the trustee of a certificate, sworn to by the president of the company, showing the number of miles of railway completed and ready for operation.

And whereas this indenture has been authorized by a resolution of the board of directors of the company.

And whereas, in pursuance of said resolution and authority, and as authorized by law, the company has determined to issue first mortgage bonds.

And whereas said bonds, omitting dates and rates of interest, are substantially of the form and tenor following, namely:

UNITED STATES OF AMERICA, *State of Texas:*

Rio Grande and Pecos Railway Company. First mortgage six per cent. gold bond.

The Rio Grande and Pecos Railway Company acknowledges itself indebted to the Mercantile Trust Company, trustee, or bearer, in the sum of —— dollars, which sum it will pay in gold coin of
13 the United States of America, at par, on the first day of June, A. D. 1912, in the city of ——, in the State of ——; and also will pay interest on said sum semi-annually, at the rate of —— per centum per annum, in the like gold coin, at the office of the ——, on the first days of ——, and —— in each year, upon presentation and delivery of the coupons annexed as they respectively become due.

This is one of the first-mortgage bonds of said company, all of like tenor issued and to be issued from time to time in series, this issue to be known as series A, bearing such dates and rates of interest, and payable at such times as the directors deem advisable to fix therein, and absolutely limited, so that the total of said bonds outstanding at any time shall not exceed $20,000 a mile of constructed railway. All said bonds, without preference, are secured by a first mortgage, dated May 10, 1882, executed by said company upon all its railway lines constructed and to be constructed between Laredo, in Webb county, and Eagle Pass, in Maverick county, in the said State of Texas, with all their appurtenances, and upon its twenty thousand acres of coal lands in said Webb county, to The Mercantile Trust Company, Trustee; and none of said bonds are binding upon
14 the company unless authenticatad by a certificate endorsed signed by said trustee, its successor or successors in said trust.

This bond is transferable by delivery, or it may be registered upon the books of the company, and thereafter transferred only by the registered holder, or his attorney, upon said books, with endorsement hereon by the treasurer or transfer agent of the company, unless the last transfer is to bearer, which will restore transferability

by delivery, subject to successive registrations at the will of the holder.

If the holder desire he may sever and deliver for cancellation all the coupons remaining upon any registered bond, and thereafter interest will be paid only to the registered holder or his attorney.

In witness whereof the said company has caused its corporate seal to be hereto affixed, and these presents to be signed by its president and secretary, at Laredo, in the State of Texas, on the — day of —— A. D. 1882.

[SEAL.] ——— ———, *President.*

———— ———, *Secretary.*

(Form of coupon or interest warrant.)

The Rio Grande and Pecos Railway Company will pay the bearer, at is financial agency in the city of New York, thirty dollars in United States gold coin on the — day of ——, 188–, being
15 six months' interest then due on its first *first* mortgage bond No. —, June, 1912.

No. —. ——— ———, *Treasurer.*

And each of all said bonds shall have endorsed thereon the following certificate of the trustee:

(Trustee certificate.)

It is hereby certified that the within bond is one of the bonds secured by the said deed of trust mentioned within.

——— ———, *Trustee.*

And whereas the company desires to secure the payment of the principal and interest of all said first-mortgage bonds without preference by reason of priority of issue, or any cause whatsoever, by mortgaging all said franchises, railways, with their rights of way, equipment, accessories, and appurtenances of every description, including docks, wharves, elevators, warehouses, stations, shops, and structures of every kind now and hereafter pertaining thereto and its twenty thousand acres of coal lands in Webb county, Texas, to the trustee, for the equal benefit of any and all persons and corporations who may at any time become holders of any of said bonds according to their several interest:

And whereas the trustee is willing to accept said trust:

Now, therefore, in consideration of the premises and of one
16 dollar paid to the company by the trustee, the receipt whereof is hereby acknowledged, the company hereby gives, grants, bargains, sells, and conveys to the trustee, its successor or successors in said trust, all the said franchises, lands, rights of way, railways, with their equipment, appurtenances, and accessories of every description, docks, wharves, elevators, warehouses, stations, shops, and structures of every kind whatsoever, together with all tools, carts, animals, rails, fastenings, locomotives, cars, ties, railway machinery, and material of every kind destined to be used in the construction, maintenance, or operation of the same, and all the tolls, rents, and profits thereof, to have and to hold to the trustee, its successor or

successors and their assigns, in trust for the purposes and upon the conditions and agreements following, namely:

Article 1. Until default shall be made in the payment of principal or interest of the said bonds, or some of them, or until default shall be made in respect to something by these presents required to be done, observed, performed, or kept by the company, it and its successors and assigns shall be suffered and permitted to possess, manage, operate, and enjoy the said properties, and every part thereof, with their equipments and appurtenances, and to take and use the tolls, rents, and profits thereof, in the same manner and with the same effect as if this deed had not been made, except as hereinafter provided.

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Article 2. The company shall pay any taxes and assessments which may be levied upon said property; but, unless the trustee in writing requests the company to pay the same, failure to make such payment shall not be deemed a default within the meaning of the third and fourth articles.

Article 3. In case default shall be made in the payment of any interest, or any of the aforesaid bonds issued or to be issued, according to the tenor thereof, or of the coupons thereto annexed, or in any requirement to be done or kept by the company, and such default shall continue for the period of twelve months, or before the expiration of twelve months if the company consent, it shall be lawful for the trustee, its successor or successors in said trust, personally or by attorney or agent, to enter into or upon all and singular the premises hereby conveyed, or intended so to be, and each and every part thereof, and to have, hold, and use the same, operating by their attorney, agent, or servants, the said premises, and conducting the business thereof, and making from time to time all repairs and replacements, and such useful alterations and improvements thereto as may seem to them to be judicious, and to collect and receive all tolls, incomes, rents, issues, and profits of the same, and of every part thereof; and after deducting the expenses of operating and conducting the business, and of all said repairs, replacements, alterations, and improvements, and all payments which may be made from taxes, assessments, charges, or liens, prior to the lien of these presents upon the said premises, or any part thereof, the moneys arising as aforesaid shall be applied to the payment of interest upon said bonds in the order in which such interest shall have become or shall become due, ratably to the person holding the evidence of the right to such interest; and after paying all interest which may be due, then the remainder shall be applied to the satisfaction of the principal of the said bonds which may be at that time due and unpaid, ratably and without discrimination or preference. Provided, that if at any time prior to actual sale of said property by the trustee, under the power herein granted, the company shall pay all interest and the principal of all bonds secured hereby which may be due and unpaid, and also all lawful taxes and assessments which may be overdue; or, if the trustee in possession has paid the same in full out of the earnings of said property, in either case said property, with all

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repairs and improvements, and all moneys, claims, accounts, and demands pertaining to the same in possession of the trustee shall be surrendered to the company, subject, however, to the pro-
19 visions of this mortgage.

Article 4. In case default shall be made as aforesaid, and shall continue as aforesaid, or in case default shall be made in the payment of the principal of any of the said bonds, or any part thereof, and such default shall continue for the period aforesaid; it shall likewise be lawful for the trustee, its successor, or successors, in said trust after entry, as aforesaid, or without entry, personally or by their attorney or agent, to sell and dispose of all, and singular, the premises hereby conveyed, or intended so to be, at public auction, in the city of New York, having first given notice of the time and place of such sale by advertisement, to be published not less than three times a week, for six weeks, in one or more newspapers in said city of New York, and such other advertisement as it or they deem advisable, and to adjourn the said sale from time to time in its or their discretion; and if adjourned, to make the same at the time and place to which the same may be so adjourned; and upon such sale, to make and deliver to the purchaser or purchasers of the property so sold, good and sufficient deed or deeds in law for the same, which sale, made as aforesaid, shall be a perpetual bar, both in law and equity, against the company, and all persons whomsoever lawfully claiming said premises, or any part thereof,
20 by, from, through, or under it; and after deducting from the proceeds of such sale just allowances for all expenses, advances, or liabilities which may have been made or incurred by the trustees in operating and maintaining the said premises, and all payments which may have been made by them for taxes or assessments thereon, as well as compensation for their own services, to apply the remainder of said proceeds to the payment of the principal of such of the aforesaid bonds as may be at that time unpaid, whether or not the same shall have become due, and for the unpaid interest which shall have at that time accrued on the said principal, without discrimination or preference, ratably to the aggregate amount of such principal and interest; and if, after satisfaction thereof, a surplus shall remain, to pay over the same to the company or to whomsoever may be lawfully or equitably entitled to receive the same.

And it is hereby declared that the receipt of the trustees shall be that such purchaser, his heirs, executors, administrators, or assigns, shall not, after payment thereof and having such receipt, be liable for any loss or misapplication of the purchase money or any part thereof, or be obliged to enquire into the necessity, expediency, or authority of or for any such sale.

21 Article 5. In case default shall be made in the payment of any half-year's interest on any of the aforesaid bonds, the respective coupons having been presented, and the payment having been demanded; and such default shall continue for the period of twelve months after the said coupon shall have become due and payable, then and thereupon the principal of all the bonds secured

hereby shall, at the election of the trustee, become immediately due and payable, anything contained in the said bonds, or herein, to the contrary notwithstanding; but a majority in interest of the holders of said bonds may, by an instrument in writing, signed by such majority before the interest in arrears shall be paid, instruct the trustee to declare the said principal to be due, or to waive the right so to declare, on such terms and conditions as such majority shall deem proper, or may annul or reverse the election of the trustee, provided that no action of the trustee or bondholders shall extend to, or be taken to effect, any subsequent default, or to impair the rights resulting therefrom.

Article 6. The company shall, from time to time, and at all times hereafter, and as often as thereunto requested by the trustee, execute, deliver, and acknowledge, all such further deeds, con-
22 veyances, and assurances in the law, for the better assuring to the trustee, upon the trust herein expressed, the *the* said premises hereinbefore conveyed or intended so to be, and any and all branches and extensions of said lines of railway with their equipment and appurtenances, as by the trustee, or by its counsel learned in the law, shall be reasonably advised or required. Provided, if said company shall hereafter acquire any additional or other franchises, and shall construct any railways thereunder, it may at its election consider the same as included in the terms of this mortgage, and subject to all of its provisions, or it may make a seperate mortgage thereon, and issue its bonds in accordance therewith.

Article 7. The trustee shall have full power, in its discretion, upon the written request of the company, to convey, by way of release or otherwise, to the persons designated by the company, any lands acquired or held for the purpose of yards, stations, warehouses, shops or other buildings; and shall also have power to convey as aforesaid, on like request, any lands or property which, in the judgment of the trustee, shall not be necessa*ar*y for use in connection with said railways, of which may have been held for a supply of the fuel, gravel, or other materials; and also to convey as aforesaid, on like request, any lands not occupied by the track which
23 *which* may become disused by reason of a change of the location of any station-house, depot, shop, or other building, and such lands occupied by the track and adjacent to any station-house, depot, shop, or other building which the company may deem it expedient to disuse or abandon by reason of such change, and to consent to any such change and to such other changes in the location of the track or depots or other buildings as in their judgment may be expedient, and to make and deliver the conveyance necessary to carry the same into effect; but any lands which may be acquired for permanent use in substitution for any so released shall be conveyed to the trustee upon the trust of these premises.

Article 8. It shall be the duty of the trustee to execute the power of entry hereby granted, or the power of sale hereby granted, or both, or to make appropriate proceedings in equity — at law to enforce the rights of the bondholders under these presents, upon the written request of holders of a majority in interest of the outstanding bonds

and a proper indemnification against the costs and expenses likely to be incurred.

Article 9. If the party of the first part shall well and truly pay the principal of the said bonds, and every of them, and all interest thereon, according to the tenor of the said bonds and the coupons annexed thereto, and shall well and truly observe, perform, and keep all and singular the several things herein required to be by it performed or kept, according to the true intent and meaning of these presents, then and in that case all the estate, right, title, and interest of the trustee, its successor, survivor, and the survivor of its assigns in the trust hereby created, shall cease, determine, and become void; otherwise the same shall be and remain in full force and virtue.

Article 10. The present or any future trustee may resign upon thirty days' notice in writing to the company and to the holders of record of the bonds hereby secured, and may be removed at any time by a vote of a majority in interest of the holders of said bonds outstanding at a meeting of the bondholders, attested by a written statement of such vote, signed by the persons so voting, and may be removed at any time by company, its successors or assigns, with the written assent of the holders of a majority of all said bonds outstanding; and any vacancy in the truste-ship hereby created, occasioned by the dissolution, death, resignation, removal, incapacity, or refusal to act of the present or any succeeding trustee, may be filled by appointment made by the company, with the approval of the majority in interest of the bondholders present or represented in proxy at a meeting held for that purpose, and such action may be had in anticipation of and before the actual happening of a vacancy; and if the vacancy is not filled as aforesaid before the expiratiou of thirty days after the same has occurred, any justice of the supreme court of New York may, upon the application of the company, or of any holder or holders of a majority of the bonds outstanding, appoint one or more persons or corporations to fill said vacancy.

The said trustee shall receive a reasonable compensation for every act done by it as such trustee under this indenture; and the said trustee shall not be required to take any step in the execution of this trust likely to subject it to liability or expense unless the holders of the bonds secured thereby, or some of them, shall give sufficient security to indemnify the trustee from such liability or expense.

It is agreed between the parties hereto, and made part of the contract with the holders of the bonds secured hereby, that the said trustee herein shall not be required to look beyond the certificate of the *of the* president, as herein provided, and shall not be responsible in any event for any act done in pursuance of such certificate or certificates. No trustee shall be removed until its or his reasonable claim for services rendered and expenditures made in carrying out the trust up to the date of such removal have been paid.

And the act of appointment made in any of the ways aforesaid, and the acceptance on the part of the appointee, shall vest in said appointee all the estates, rights, titles, properties, inter-

est, and powers before vested in his or its predecessor under this mortgage, upon the trust agreements and conditions therein declared. Nevertheless the present and any and all future trustees hereunder by the acceptance of said trust severally covenant and agree, for themselves, their successors, executors, and administrators respectively, that they will execute, acknowledge and deliver, each to his or its respective successor or successors in said trust from time to time, as often as requested thereunto by the company or by the holders of a majority of said bonds outstanding, such deeds, conveyances, and assurances in the law for the better assuring to such successor or successors the said estates, rights, titles, properties, interest, and dowers, as counsel learned in the law may reasonably advise or require. Meetings of the bondholders for any of the purposes mentioned in the fifth, eighth, and tenth articles may be called by holders of a majority in amount of the bonds outstanding by publishing notice of the time and place of meeting in one or more newspapers in the city of New York twice each week for six successive weeks prior to the time of said meeting. And in all meetings of bondholders, holders of record and persons exhibiting proof satisfactory
27 to said meeting that they are *bona fide* holders of said bonds shall be entitled, in person or by attorney, to vote in proportion to the amount held by them.

Article 11. The trustee may, in case of necessity, with previous consent of the company, if not in default, employ agents, attorneys, or servants in the discharge of said trust, and their just and reasonable charges shall be paid by the company. The trustee, its successor or successors in said trust, shall not be liable for any error of judgment or mistake of fact made in good faith, nor for any act or thing whatsoever done, suffered, or neglected by its or their agents, attorneys, servants, or employés, selected in good faith, in the discharge of said trusts. And if at any time there shall be two or more trustees joined in the said trusts neither shall be in any manner answerable for the acts of the other.

In witness whereof the company has caused its corporate seal to be affixed to these presents, and the same to be signed by its president and attested by its secretary; and the trustee, to signify its acceptance of said trusts, has also caused its corporate seal to be affixed thereto, and the same to be signed by its president and attested by its secretary, the day and year first above written.

By —— ——, *President.*

Attest: —— ——, *Secretary.*

By —— ——, *President.*

28 Attest: —— ——, *Secretary.*

STATE OF TEXAS, }
City of Laredo and County of Webb, } *ss:*

Be it remembered that on this — day of May, A. D. 1882, before me, a notary public in and for the said State and county, residing in said city of Laredo, personally appeared A. C. Hunt, the president of the Rio Grande and Pecos Railway Company, to me personally

known to be such, who, being by me duly sworn, did depose and say: That he, said A. C. Hunt, resides in the State of Colorado; that he, said Hunt, is the president of the said company; that he knows the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal, that it was so affixed thereto by order of the board of directors of said company, and that he, the said Hunt, as such president, signed the name of said company and his own name thereto by the like order as president of said company; and he being personally known to me to be the same person whose name is signed to the foregoing instrument, acknowledged to me that he signed, sealed, and executed the same as his own free and voluntary act and deed, and as the free and voluntary act and deed of the said company, for the consideration, purposes, and ob-
29 jects therein stated.

In witness whereof I have hereunto set my hand and affixed my official seal, this the — day of May, A. D. 1882.

——,
Notary Public.

THE STATE OF TEXAS, }
City of Laredo and County of Webb, } *ss:*

On this — day of May, A. D. 1882, before me, ——, a notary public in and for said State and county, residing in the city of Laredo, personally appeared ——, to me personally known to be the secretary of the Rio Grande and Pecos Railway Company, and who, being duly sworn, did depose and say: That he resides in the city of Laredo; that he is the secretary of the said company; that he knows its corporate seal; that the same is affixed to the foregoing instrument, and that it was so affixed by the order of the board of directors of said company; and the said —— then and there acknowledged that he had as such secretary executed the said instrument and affixed the said corporate seal thereto, freely and voluntary, as the act and deed of said company, and as his own free and voluntary act in behalf of said company, for all the uses, objects, and purposes therein stated.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

——,
Notary Public.

30 STATE OF NEW YORK, }
City and County of New York, } *ss:*

Be it remembered that on this — day of May, A. D. 1882, there personally appeared before me Louis Fitzgerald, president, and Henry C. Deming, secretary of the Mercantile Trust Company, to me respectively personally known to be such, who, being by me severally duly sworn, did depose and say: That he, said Fitzgerald, resides in New York city, State of New York; that he, said Fitzgerald, is the president, and he, said Deming, is the secretary, of the said Mercantile Trust Company; that they both know the corporate seal

of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the board of directors of said company, and that they, the said Fitzgerald as such president and the said Deming as secretary, signed the name of said company and there own names thereto by the like order as president and secretary of said company, respectively, and they each respectively, being personally known to me to be the same persons whose names are signed to the foregoing instrument as parties thereto, acknowledged to me they signed, sealed, and executed the same as their own free and voluntary act and deed, and as the free and voluntary act and deed of said company, for the consideration, purposes, and objects therein stated.

In witness whereof I have hereunto set my hand and affixed my official seal this the — day of May, A. D. 1882.

——, *Notary Public.*

31 Endorsed: 24. October sessions, 1884. Wright *vs.* The Rio Grande and Pecos railway Company. C. C. western district of Texas. Exhibit to bill. Filed April 14, 1884. W. C. Robards, clerk.

Answer of Defendants. Filed April 14th, 1884.

In the Circuit Court of the United States for the Western District of Texas. October Sessions, 1884.

Between C. B. WRIGHT, a Citizen of the State of Pennsylvania, Plaintiff,
and
THE RIO GRAND AND PECOS RAILWAY COMPANY, A Corporation Created and Existing under the Laws of the State of Texas, and the Mercantile Trust Company of the City New York, a Corporation Created by and Existing under the Laws of the State of New York, and a Citizen of New York, Defendants. } No. 24.

The answer of The Rio Grande and Pecos Railway Company to the bill of complaint of the said C. B. Wright.

The said Rio Grande and Pecos Railway Company, defendant, answering, says:

1. That they admit that the plaintiff, C. B. Wright, is a citizen of the State of Pennsylvania, and is a holder of the amount of bonds of the said company he has stated in his said bill. These
32 defendants are citizens of the State of Texas, and incorporated under the laws thereof.

2. The defendants admit that they issued the bonds secured by mortgage of the franchises and property, lands, and railway of the defendants, as set forth in the said bill.

3. It is true that there exist and are now outstanding a large number of claims for work and labor done in and about the construction of the railroad of this company, and judgments have been

obtained on some of the said claims upon which execution has issued, and is now pending against the company, and although sales under the said executions have been put off from time to time up to the present time, it is true that portions of the property of this company will necessarily be exposed to sale under the said executions, unless prevented by the decree of this court.

4. The railway, coal lands; and other property of this company are of great value and large extent, and the company is now mining coal at the rate of about fifty tons a day, and would be irreparably injured by any separation of its coal and railway property, the two being both necessary for the transaction of its business of mining and transporting coal to market.

The defendants therefore submit themselves to the decree of this honorable court in the premises.

A. C. HUNT,
President of the Rio Grande and Pecos Railway Company.

Duly sworn to and subscribed this 9th day of April, 1884, before me.

[SEAL.] E. R. HUNT.
U. S. Commissioner.

33 Endorsed: 24. October sessions, 1884. Wright *vs.* The Rio Grande & Pecos Railway Co. C. C., U. S. A., western district of Texas. Answer of defendants. Filed April 14, 1884. W. C. Robards, clerk.

Decree Appointing a Receiver. Filed 14th April, 1884.

C. C., U. S., Western District of Texas.

C. B. WRIGHT,
vs.
THE RIO GRANDE AND PECOS RAILWAY COMPANY AND THE Mercantile Trust Company of the City of New York, Defendants. } No. 24.

And now, to wit, Wednesday, April 9th, A. D 1884, this cause came on to be heard on bill and affidavits, Geo. Biddle, Esqr., appearing for the plaintiff, Hon. A. C. Hunt, the president of the corporation defendant, appearing in person for said corporation, The Rio Grande and Pecos Railway Company, upon motion for the appointment of a receiver, and was argued by counsel; and thereupon, after due deliberation, it was ordered, adjudged, and decreed that Henry Chevalier Smith be, and he is hereby, appointed receiver of said corporation, defendant, and of the railroad real and personal property and estate of the said Rio Grande and Pecos Railway Company, and of all the property, privileges, franchises, and powers of
34 the said Rio Grand and Pecos Railway Company of whatever kind or description and wheresoever situated, including all coal lands, coal, whether mined or in the ground, collieries, locomotives, cars, and other rolling stock, tools, machinery, coal yards and fixtures, coal on hand at the mines, at the points of shipment, and else-

where, all books of account, money, debts, things in action, bonds, securities, deeds of writing, leases, miniments of title, bills receivable, rents, profits, and income of the premises, accruing and to accrue, as well as all rights, easements, privileges, and franchises of the said corporation, defendant.

That the said receiver be, and he is hereby, authorized to run and operate the said railway, and to exercise the authority and franchises of the said company and to preserve the said property in proper condition and repair, so that it may be with safety and most advantageously used, and to protect the title and property of the same, and to employ such persons and make such payments and disbursements as may be needful and proper in so doing.

And, further, that the said receiver be, and he is hereby, authorized and directed to keep the coal, coal lands, and coal mines, and other property of the said corporation employed and used in the manner they have heretofore been used and employed, so far as the said receiver shall deem it to be for the best interest of all parties interested; and to continue the mining operations of the said
35 corporation, and to sell and dispose of the coal already mined or to be mined, either for cash or on the usual credit, and out of the proceeds thereof to pay the wages, taxes, royalties, rents, freights, debts for supplies, and interest due on securities charged on the property, to protect the same from forfeiture.

And the said receiver is hereby authorized to collect the income, tolls, and profits of the said railroad, and to make appropriate payments therefrom on account of accruing rents and other necessary charges, and also all sums of money maturing after the appointment of the receiver, and to arise and mature for materials and supplies, as well as the wages of all employees necessary about the operation or for the use of the said railroad, including all rents and taxes due and growing due by the aforesaid corporation, and all sums due and to become due to other railroads and transportation companies of the said corporation.

And, further, that he, the said receiver, with all convenient speed ascertain and report the state, condition, and circumstances of the property, and of the debts and liabilities charged thereon or owing by the corporation defendant; and upon presenting said report he be authorized to borrow money to pay the running expenses of the said company, and to settle and pay off liens upon the property and railroad of the corporation defendant prior to the first-mort-
36 gage bonds, and all other expenses incurred by him, including his own compensation as receiver hereunder, and to issue receiver's certificates for the same in such form and in such amounts as shall be hereafter duly authorized from time to time by the court.

And it is further ordered that the joint and several bonds of the said receiver and Jessee E. Smith, and of the said receiver and C. B. Wright, as sureties, each of the said bonds to be in the sum of ten thousand dollars, lawful money of the United States, conditioned that he the said receiver shall well and duly perform the duties of his said office, and duly account for all monies or property that may

come into his hand, and abide by and perform all things which he shall be directed to do, be forthwith filed in the office of the clerk of this court in and for the western district of the State of Texas. And the said receiver is ordered and directed to keep an account of all sums received and paid out by him on account of the said corporation, and to pass his accounts on the 1st day of July, 1884, and semi-annually thereafter before this court or before such special commission or master as shall by this court, for that end, be appointed; and that the said receiver be, and he is hereby authorized to employ such agents, assistants, and counsel as may be reasonable and proper, and to do all acts and make all payments necessary for the effectual discharge of his duties by this order conferred.

37 It is further ordered that an injunction be issued against the defendants, and all persons claiming to act by, through, or under them, and all other persons whatsoever, to restrain them from interfearing with the said receiver taking possession and managing the said property, with leave to any party in interest to apply for further direction.

The clerk, on the filing of the papers in court, including this order, will issue the necessary writs.

DON A. PARDEE, *Judge.*

Endorsed: No. 24. C. B. Wright *vs.* Rio Grande & Pecos R. R. Co, *et al.* Filed April 14, 1884. W. C. Robards, cl'k.

C. B. WRIGHT *vs.* THE RIO GRANDE & PECOS R. R. Co. *et al.*

And now, June the eleventh, 1884, on motion of Wm. Aubrey, Esq'r, and George Biddle, Esq'r, of counsel for Henry Cavalier Smith, receiver of the Rio Grande and Pecos Railway Company, and after hearing the court order and decree, as follows:

First. That the said Henry Cavalier Smith, receiver as aforesaid, be and is hereby authorized and directed, at his discretion, to continue to carry out on the part of said company a certain con-

38 tract heretofore entered into by it prior to the appointment of the said receiver for the sale of a certain quantity of coal to the International and Great Northern Railway Company, for which coal the said Rio Grande and Pecos Railway Company had received payment in advance, or at his discretion to enter into such modification thereof, for the payment in cash of a proportion of the said product, as the same is from time to time delivered, on the best terms that the said receiver may be able to.

Second. And further, that the said Henry Cavalier Smith, receiver as aforesaid, be, and he is hereby, in his discretion, authorized to carry out a certain contract, entered into by the said company prior to his appointment, with E. D. Sidbury & Co., of Corpus Christi, Texas, for the delivery of coal, and to complete the deliveries thereunder.

Third. That the said Henry Cavalier Smith, receiver as aforesaid, be, and he is hereby, directed and required to forthwith have prepared receiver's certificates in the form following, to wit:

The Rio Grande and Pecos Railway Company.

No. —. Receiver's certificate. $1,000.

Issued under order of ——, 1884, of the circuit court of the United States for the western district of Texas.

This is to certify that there is due to bearer one thousand dollars, for funds, labor, constituting a lien upon the property of the
39 railway company prior to its first mortgage bonds, necessary materials, and supplies furnished by —— to the Rio Grande and Pecos Railway Company.

This certificate is issued by the receiver in pursuance of an order of the circuit court of the United States for the western district of Texas, made upon the — day of ——, 1884, and constitutes, with other like certificates issued by the order of the court *court*, a first and exclusive lien upon all property of the said company, and is payable out of any funds in the hands of the receiver applicable thereto, with interest from date at the rate of eight per cent. per annum, at such date as may be fixed by the receiver, by public notice at thirty days published in two newspapers, one in Laredo, Texas, and one in Philadelphia, Pennsylvania, from and after which date the interest thereon will cease.

Laredo, Texas, ——, 1884.

—— ——, *Receiver.*

Not valid unless countersigned by the auditing department and registered by The Guarantee Trust and Safe Deposit Company, of Philadelphia, —— ——, president, to an amount not exceeding twenty-five thousand dollars ($25,000), which said
40 certificates, together with such further like certificates as may be hereafter authorized by this court, shall constitute and be a first and exclusive lien upon all the property, both real and personal, of the said The Rio Grande and Pecos Railway Company, prior to any other liens thereupon, and payable by the receiver of the said company, or his successors, prior to the termination of his or their office, each certificate to be of the denomination of one thousand dollars, and bearing interest at the rate of eight per cent. per annum, and payable out of any surplus moneys in the hands of the receiver after the payment of the running expenses of the said railway company; and further, that the said receiver be authorized to negotiate and dispose of the same at not more than one per cent. discount; that is to say, at least at ninety-nine per cent. of the face value thereof, or on any more favorable terms that he may be able to obtain.

Fourth. And that after exhausting the receipts of said railroad out of the proceeds of the said receiver's certificates, the said Henry Cavalier Smith, receiver, do pay:

First. The running expenses of the said company which have accrued since his appointment as receiver, and are now maturing, including all legal and other expenses, incurred by the first mort-
41 gage bond-holders, or any of them, *or any of them*, in obtaining appointment of the said receiver.

Second. And out of the balance remaining to pay so much of the debts of the said company as may be reported by the master and approved by the judge, taking in every case an assignment to himself as said receiver to said claims.

Fifth. That in lieu of commissions upon the sale of the property of the Rio Grand and Pecos Railway Company, or of any of its dependencies, or any other commission to which he might otherwise become entitled, the compensation of the receiver is hereby fixed at five thousand dollars for the first year, from April 9th, 1884, or other sooner termination of his said office, and should he continue to hold said office for a longer period thereafter at the rate of five thousand dollars per annum, apportionably and payable monthly, and that the payment of the said compensation constitute a part of the running expenses of the said railroad company, and that the receiver be, and he is hereby, authorized to draw the same at the rate of $416.66 monthly.

It is further ordered that the receiver herein do file a report in this court showing the receipts and disbursements of said receiver, and full matters pertaining to his receivership, so as to exhibit the
42 true condition of said road under his management on the 10th day of July, 1884, and on the 10th day of each succeeding month thereafter.

It is further ordered that S. G. Newton, Esq'r, is hereby appointed special master in this cause for the purpose of reporting upon all claims that shall be presented to and filed with him, as hereinafter stated, and said special master shall give notice weekly for the period of four week in some newspaper published in Laredo, Texas, calling on all persons having or asserting any liens or claims, by judgment or otherwise, prior to the first mortgage bonds, are entitled to the preference of payment out of the proceeds of said road master shall, upon filing his said report, give notice of the filing to present and file the same with him to the end that said special thereof to all persons, or their attorneys, who have filed claims with him by letter addressed to each person, or their attorneys, and in the discharge of his duties under this order, and in the hearing and acting upon all claims, this said master shall conform to the rules and practice governing this court in equity cases.

E. B. TURNER, *Judge*

43 *Claim of A. W. Wilcox, filed before Special Master June 24th, 1884. Filed in Court Sept. 29th, 1884.*

In the Circuit Court of the United States for the Western District of Texas, at San Antonio. In Equity.

C. B. WRIGHT

versus

THE RIO GRANDE AND PECOS RAILWAY COMPANY and THE MERCANTILE TRUST CO. OF THE CITY OF NEW YORK.

In pursuance of an interlocutory order and decree made in above cause on the — day of June, A. D. 1884, wherein S. G. Newton, Esq'r, was appointed special master, A. W. Wilcox, who is a resident

citizen of Laredo, Webb county, Texas, presents to and files with the special master the following claim:

A judgment of the district court of Webb county, Texas, rendered March 27th, 1884, in cause No. 435, in favor of the said A. W. Wilcox against the said Rio Grande and Pecos Railway Company, for $5,526.78, with ten per cent. interest thereon from January 12th, 1884, and declaring and establishing a lien on said Rio Grande and Pecos railway and its equipments to secure the payment of said judgment, and directing the said railway and its equipments, or so much thereof as may be necessary, to be sold to satisfy the said judgment, as will more fully appear by a duly certified copy of said judgment hereto annexed, marked "Exhibit A" and made a part hereof. The lien declared
44 in said judgment is based upon money due by the said Rio Grande and Pecos Railway Company to mechanics, laborers, and operatives who performed labor in the constructing and repairing and operating said railway, and thereby under the laws of Texas acquired a lien prior to all others, and that said claims so constituting a prior lien were bought by said A. W. Wilcox, and the said Rio Grande and Pecos Railway Company acknowledged the existance thereof, and promised to pay the same by its obligation and note of date, January 12th, 1884, upon which obligation and note the said judgment was rendered.

The said judgment is unreversed and remains in full force. And the said A. W. Wilcox claims that his said lien, established by said judgment before the institution of this suit or the appointment of a receiver, is prior to the first mortgage bonds, and is entitled to preference of payment out of the earnings and proceeds of said railway, and will apply to this court for such appropriate orders as will secure prompt payment.

A. W. WILCOX.
A. J. PEELER,
Solicitor.

STATE OF TEXAS, *Webb County:*

Before me, J. L. Bartlett, a notary public in and for said county and State, personally came A. W. Wilcox, to me known to be the person who subscribed the foregoing claim against the Rio Grande and Pecos Railway Company, who, being first duly sworn,
45 says that he is the owner of said claim, and that the same is just and correct, and that no part of the principal or interest of the judgment therein referred to, or the costs of the suit wherein the said judgment was rendered, has been paid, and that there are no legal offsets or credits thereto.

A. W. WILCOX.

Sworn to and subscr'ed before me this 23d day of June, A. D. 1884.

J. L. BARTLETT,
Notary Public, Webb Co., Texas.

EXHIBIT A.

THE STATE OF TEXAS, *County of Webb:*

I, W. H. Mowry, clerk of the district court in and for Webb county, Texas, do hereby certify that at a term of the district court in and for Webb county, Texas, begun and holden at the court-house thereof, in the city of Laredo, on the 7th Monday after the 1st Monday in February, being the 24th day of March, A. D. 1884, the Hon. John C. Russell, judge thereof, presiding, the following order, decree, or judgment was entered in the minutes of said court, in the trial of case No. 435, entitled A. W. Wilcox *vs.* The Rio Grande & Pecos R'y Co.

THURSDAY, *March 27th*, 1884.

A. W. WILCOX
vs.
THE RIO GRANDE & PECOS R'Y CO. } 435.

This day came plaintiff, and the defendant, by attorney-in-fact, A. S. McLane, comes and says that he cannot deny the action of the said A. W. Wilcox, and that he is justly indebted to plaintiff in
46 the sum of fifty-five hundred and twenty-six and $\frac{78}{100}$ dollars, with ten per cent. interest thereon from the 12th day of January, 1884, and it appearing to the court that a sufficient power of attorney has been filed in this cause authorizing A. S. McLane, in default of payment, to confess judgment before any court of competent jurisdiction, and waiving citation and service, it is therefore ordered, adjudged, and decreed, that the plaintiff, A. W. Wilcox, have and recover of the defendant, The Rio Grande and Pecos Railroad Company, the sum of fifty-five hundred and twenty-six $\frac{78}{100}$ dollars, with ten per cent. interest thereon from the 12th day of January, 1884, for which execution may issue.

It is further ordered by the court that the plaintiff have a lien on the said Rio Grande and Pecos Railroad Company and its equipments to secure the payment of this judgment, and that said railroad and its equipments, or so much thereof as may be necessary, be sold to satisfy this judgment.

* * * * * *

And I further hereby certify that the above and foregoing is a true and correct copy of the order, decree, and judgment rendered in the above cause, as the same appears in the minutes of said court, in vol. 21, page 799. To certify which I hereto attach my official seal and signature, at office, in Laredo, Texas, this 22d day of May, A. D. 1884.

[SEAL.]

W. H. MAURY,
Clk Dist. Court, Webb County.
By J. MONTAGUE, *Dep.*

47 Endorsed: A. W. Wilcox. No. 24. Filed June 24th, 1884. S. J. Newton, special master. Filed Sept. 29, 1884. W. C. Robards, clerk, by D. West, deputy.

Evidence Claim No. 1. Filed 27th Sept., 1884.

MARK SHAFFENBURG, being duly sworn, says:

I am acquainted with Dr. A. W. Wilcox. I know Gov'r Hunt, ex-president of R. & P. R. R. Co. I have been connected with the road since its organization, and elected one of its directors, afterwards acted as secretary until March, 1883, when elected by the board of directors as secretary. I was familiar with the business of the R. R. Co. During my connection with it a note shown me, "which is admitted to be the same note sued on," I wrote. I was secretary at the time I wrote it. I know upon what order I issued the note. It was issued, and a statement submitted to me by Doctor Wilcox and Gov'r Hunt, at the request of Gov'r Hunt, then president of the R. G. & P. R. R. Co. Gov'r Hunt made no other statement than that he told me to issue the note. The first time I saw the statement the Gov'r requested me to go with the doctor, and I went and checked it off. He afterwards submitted that to the Gov'r, and he requested me to issue the note for this amount. The paper shown me is the statement referred to. The account is in Mr.
48 Spenellies' handwriting. That portion in pencil is mine. The statement shown me is the identical one that Dr. Wilcox and myself checked off, and is the same upon which the note was drawn. (Complainant here introduced account, marked Exhibit "C.")

The statement marked Exhibit "D" is the basis, and shows the items that went to make up the amount shown in Exhibit "C." The items marked in Exhibit "C" are explained by vouchers marked Exhibit "E." These are not all the time-checks. All the time-checks turned over to me by Dr. Wilcox aggregated about $1,663.00. After the note was given the time-checks should be in the possession of the railroad co. The time-checks marked Exhibit "E" were handed me by railroad co. I considered the account marked Exhibit "C" as an account between the railroad co. and Dr. Wilcox. The last item in the account, for $241.70, was taken from the Doctor's statements and stoppages on the pay-rolls. I have been secretary of the company since Aug. 1st, 1882. Mr. E. L. Winslow was one of the treasurers of the railroad. Mr. George Sacket was another. At the time this note was given McLane & Atlee were attorneys for the road, and attorneys of high standing in the community. Coal is burned in the engines on the road, and taken from the mines. The mines are named San Tomas, Hunt mine, and Shaft No. 1. The road has been operated with coal taken from
49 these mines. Coal is the principal article transported by the railroad. "It is admitted that the amount derived from carriage of passengers during the last month is much less than for the transportation of coal."

The coal is considered as the product of the R. R. Co., and we keep no seperate account for its transportation.

MARK SHAFFENBURG.

Sworn to and subscribed before me this 5th day of September, 1884.

S. G. NEWTON,
Special Master.

Dr. A. W. Wilcox, being duly sworn, testified:

The note sued on, and on which my claim is based, represented a *bona fide* indebtedness on the part of the Rio Grande and Pecos R. R. Co. to me. There was no fraud or collusion meant. The understanding at the time I surrendered my time checks and took the note was that the note was to stand in the place of the time checks as far as any lien was concerned, and I was so advised by Mr. McLane, an attorney. The petition filed in the case upon which the judgment was rendered was written by Mr. McLane and copied by me. I had no individual account with Gov'r Hunt in relation to these claims. It was a claim against the railroad company. The original vouchers I had was turned over to the railroad co., with the understanding that no rights I had under them was to be
50 waived. In the absence of these papers, I am not prepared to state for what these vouchers were given. I purchased these time checks from necessity, and out of consideration for the employees; they gathered in such numbers in *the* and about the office of the R. R. co., over which I and my family lived, that it was dangerous. They were half naked and had nothing to eat. The item of Sept. 20, 1883, was loaned to pay employees of the road, who gathered around the office of the road on that day and demanded their money.

With the exception of one or two instances all the money I advanced was to pay laborers. I did advance money to pay freights on one or two occasions when the I. & G. N. railroad were demanding demurrage for freights.

The item in Exhibit "C," dated September 12th, 1883, for $4,552.48, was made of different amounts. Not a single cent [of] Gov. Hunt's indebtedness to me was included in the note. No merchandise was included in the note. Some of the time checks was for labor in the mines. I cannot say what proportion.

DR. A. W. WILCOX.

Subscribed and sworn to before [me], this 5th day of September, 1884.

S. G. NEWTON,
Special Master.

The claimant then introduced in evidence all papers in the case relating to the railroad and the mines, showing the relation between the two.

51 Mark Shaffenburg, being recalled, testified:

I think that the railroad co. gave Dr. Wilcox 3 notes in settlement of his claim against the railroad co. I drew up the notes.

MARK SHAFFENBURG.

Sworn to and subscribed before me, this 5th day of Dec., 1884.

S. G. NEWTON,
Special Master.

Endorsed: No. 24. Claim No. 1. Evidence. Filed Sept. 27, 1884. W. C. Robards, clerk. By D. West, dep.

Complainant's Objections to the Allowance of Claim of A. W. Wilcox. Filed Sept. 27, 1884.

In the Circuit Court of the United States for the Western District of Texas, at San Antonio. In Equity.

C. B. WRIGHT

vs.

THE RIO GRANDE AND PECOS R'Y CO. and the MERCANTILE TRUST CO., of the City of New York.

Now comes the complainant, by his attorneys, and in the matter of the claim of A. W. Wilcox, objecting to said claim, says the same is not a just claim against the Rio Grande & Pecos R'y Co., and is not a lien on said Rio Grande & Pecos R'y Co. and its equipments, because—

First. The judgment referred to in said claim of A. W. Wilcox is a fraud upon claimant's rights as a bondholder, having bonds of the said r'y company secured by first mortgage on said
52 railway, and said judgment was obtained by collusion and fraud of said A. W. Wilcox and A. C. Hunt, the said A. C. Hunt being then the president of said railway company.

Second. The note referred to in said claim of said A. W. Wilcox was without consideration and was made by the said A. C. Hunt, as president of said railway company, acting in collusion with the said A. W. Wilcox, and fraudulently for the purpose of defeating complainant's rights under his said first mortgage.

Third. For the purpose of defeating complaint's lien under his said first mortgage the said A. W. Wilcox falsely represented to the court in which his said judgment was obtained that the note, such as was made and given to him by said railway company [was] for services and for amounts advanced on claims for labor performed in the construction and maintenance of said railroad, and that he was entitled to a lien on said railway and its equipments to secure payment of said note, which lien was prior to all others. The said Wilcox, by collusion with said A. C. Hunt as president of said railway company, procured by confession, the judgment aforesaid before complainant had knowledge of such collusion and fraud, and at the the time of obtaining said judgment said Wilcox was not entitled to any lien on said railway and its equipments; that he per-
53 formed no services which entitled him then to such lien; that he did not then have and own any labor claims or claims of any nature which then entitled him to such lien; that if at any time he performed such services as entitled him to such lien, or if at any time he owned or had labor claims or any claims of a nature entitling him to such lien, said lien was barred by limitation of one year from the time it or any such became due; that the act of said Hunt in making said note was *ultra viries*, as also the act of said Hunt in authorizing confession of said judgement; that said railway company was not indebted to said Wilcox by reason of said note, and said note was without consideration.

Fourth. Complainant has filed his suit in the district court of

Webb county to set aside and annul said judgement, on account of the acts of collusion and fraud in procuring the same; that said suit is now pending in said court, being No. 449 on the docket, in which the said Wilcox is defendant, and filed July 19th, 1884.

McLANE & ATLEE,
Att'ys for C. B. Wright, Complainant.

Endorsed: No. 24. C. B. Wright *vs.* The R. G. & P. R'y Co. *et al's.* Complainant's objections to allowance of claim of A. W. Wilcox. Filed Sept. 4th, 1884. S. G. Newton, special master. Filed Sept. 27, 1884. W. C. Robards, clerk, by D. West, Dep.'

54 *Response to Complainant's Objections to Wilcox'- Claim Before the Special Master. Filed Sept. 4th, 1884, Before Special Master, and Filed in Court Sept. 27, 1884.*

In the U. S. Circuit Court at San Antonio, Texas. In Equity.

C. B. WRIGHT *vs.* RIO GRANDE & PECOS R'Y CO. *et al.*

In re claim of A. W. Wilcox on hearing before S. G. Newton, Esq., special master, at Laredo, Texas, Sept. 4, 1884.

A. W. Wilcox, whose claim was heretofore, to wit, June 24th, 1884, filed with said special master, in response to the objections thereto filed this day by the complainant, says:

1. That complainant's said objections presents no ground in law or equity why the said claim should not be allowed, and he objects to the admission of any evidence in support of the said objections.

2d. That it is sought by said objections to assail and set aside a judgment of a court of competent jurisdiction establishing a lien in favor of said Wilcox, which is not permissible in this proceeding before the special master.

3d. If the special master, over the objections of said Wilcox, goes into testimony to support complainant's objections, then the said Wilcox denies all statements in complainant's said objections contained, and demand strict proof thereof.

Sept. 4, '84.

HALL & WATKINS,
A. Y. PEELER,
Sol'r for Wilcox.

55 Endorsed: No. —. Wright *vs.* R. G. & P. R'y Co. *et al.* In equity. Response of Wilcox to complainant's objections to his claim on hearing before special master. Filed Sept. 4th, 1884. S. G. Newton, special master. Filed Sept. 27, 1884. W. C. Robards, clerk.

Petition of A. W. Wilcox to the Dist. Court. Filed before Special Master Sept. 5, 1884. Filed in Court Sept. 27, 1884.

THE STATE OF TEXAS, *County of Webb:*

To the hon. the district court of Webb county:

The petition of A. W. Wilcox, who resides in the county of Webb, and State of Texas, complaining of the Rio Grande and Pecos R.

R. Co., a corporation duly incorporated under the laws of the State of Texas, and operating its lines through the county of Webb, where it has its principal offices, represents that heretofore, to wit, on the 12th day of January, 1884, the said defendant, in consideration of the payment of claims for labor on said defendant's R. R., executed and delivered to your petitioner a certain promissory note (see note) for the sum of fifty-five hundred and twenty-six $\frac{75}{100}$ dollars, with interest, 10 per cent., whereby defendant promised and became liable to pay your petitioner the said note, with interest, according to the tenor thereof. Your petitioner represents that he is the owner and holder of said note, and that defendant has failed and refused to pay the said note, though thereto requested, to petitioner's damage. Wherefore he prays for judgment for his debt and interest, and damages, and foreclosure of his lien on defendant's railroad and equipments.

A. W. WILCOX.

Sworn to and subscribed before me.

W. H. MAURY,
Clerk District Court.

56 Endorsed: No. 24. Copy of petition. Filed Sept. 5, 1884. S. G. Newton, special master. Filed Sept. 27, 1884. W. C. Robards, clerk, by D. West, dep.

EXHIBIT "C."—*Filed with Special Master Sept., 5th, 1884. Filed in Court Sept. 27, 1884.*

Gov. A. C. Hunt in acc't with A. W. Wilcox.

Dec. 12.	To statement to A. W. W., U. S. c....		$4,552 48	
	" 1,113.67, Mex. c., $\frac{7}{8}$		974 46	
	" statement to A. W. W. & Co....		1,639 62	
				$7,166 56
	" sundry vouchers, time checks, &c.		------	60 00
	" " " "	3	------	42 25
	" " " "	7	------	44 40
		4	------	40 61
		2	------	206 18
		5	------	13 25
		31	------	21 59
		9	------	64 05
				219 20
		8	------	50 00
				38 81
				6 40
		74	------	7 00
		19	------	87 66
		1	------	30 00
		23	------	24 75
		18	------	40 07
		16	------	36 75
				17 00
		6	------	14 28

		39	------		4 77
		38	------		3 75
57		36	------		6 02
		34	------		2 25
		30	------		11 25
		29	------		11 52
		28	------		7 50
		27	------		8 25
		26	------		12 88
		25	------		5 05
		83	------		12 50
		32	------		15 87
		35	------		30 34
		37	------		18 02
	Time checks, &c. ----------		------		241 70
	" " M'x ------	22	13 90		
		15	22 82		
		12	4 05		
		14	33 19		
		13	24 37		
		11	7 50		
		10	22 50		
		21	6 75		
			135 08		
	135,08 Mex. c, $\frac{7}{8}$ ----------		------		118 20
	Vouchers, &c. ----------	40	------		60 00
	" " ----------		------		22 70
	" " ----------		------		7 05
					$8,830 43

Credits.

	By statements of wagon acc't ------	608 35	
	Amounts credited on A. W. W. statement and charged in wagon acc't.	1,000 00	
	Amounts credited on A. W. W. statement and charged in wagon acc't.	67 50	
	Amounts credited on A. W. W. statement and charged in wagon acc't.	101 97	
58	To charged in wagon acc't ----------	134 85	
	" " ----------	117 25	
		103 18	
		22 69	
		103 55	
		72 29	
		306 75	
	N. Y. draft on June 27 ----------	995 00	
			3,633 38
	Balance ----------		5,197 05
			$8,830 43

To balance due A. W. W.		5,197 05
E. & O. E.		
Sundries		88 03
		5,285 08
Sundries from pay-rolls		241 70
		$5,526 78

Endorsed: No. 24. Exhibit "C." Filed Sept. 5, 1884. S. G. Newton, special master. Filed Sept. 27, 1884. W. C. Robards, clerk, by D. West, dep.

Copy of Note. Filed with Special Master Sept. 15th, 1884. Filed in Court Sept. 27th, 1884.

LAREDO, TEXAS, *Jan'y 12th*, 1884.

The Rio Grande and Pecos Railway Company, for value received, hereby promises to pay A. W. Wilcox, or bearer, on demand, the sum of fifty-five hundred and twenty-six $\frac{78}{100}$ dollars for services, and for amounts advanced on claims for labor performed in the construction and maintenance of the Rio Grande and Pecos railroad, with interest at ten per cent. per annum until paid, and upon default in payment A. L. McLane is hereby authorized, in the name of the said Rio Grande and Pecos Railroad Company, to *to*
59 confess judgment in any court of competent jurisdiction, hereby waiving citation and service thereof.

(Signed) THE RIO GRANDE AND PECOS RAILWAY COMPANY,
By A. C. HUNT, *The President.*

[Corporate Seal of the The Rio Grande and Pecos Railway Company.]

Endorsed: No. 24. Copy of note. Filed Sept. 5th, 1884. S. G. Newton, special master. Filed Sept. 27, 1884. W. C. Robards, cl'k, by D. West, dep.

Copy of Vouchers. Filed Sept. 27, 1884.

Copy of voucher.

Rio Grande and Pecos Railway Company. The picket line.

MINE, TEXAS *Jan'y* 9, 1884.

Geo. Sacket, act'g treas. R. G. & P. R. R'd:

Please pay to Dr. A. W. Wilcox fifty dollars, and charge the same against my pay-roll.

$50.00. W. S. GILLIAM.

Endorsed: A. W. Wilcox. Filed Sept. 27, 1884. W. C. Robards, cl'k, by D. West, dep.

Copy of voucher.

Form 41. Memorandum.

To C. Zavalla: From pay-roll.

Rio Grande & Pecos Railway Co., Laredo, Texas, Dec. 8, 1883.

Due for labor, Hunt mine, October, 1883, $44.40 (forty-four $\frac{40}{100}$ dollars.)

E. L. WINSLOW,
Act'g Treas.

his
C. x ZAVALLA.
mark.

R. G. & P. R'y. Feb'y 9, 1884. Laredo, Texas.
Endorsed: No. 24.

60 Copy of voucher

Form 41. Memorandum.

To Treas. R. G. & P. R. R.:

From Rio Grande & Pecos Railway Co., Laredo, T'xas, Dec. 3, 1883.

Martine Lena. Oct 13, '25.

Pay A. W. Wilcox my time from October, as above, $13.25.

his
MARTINE x LENA.
mark.

R. G. & P. R'y, Feb'y 9, 1884. Laredo, Texas.

Endorsed: No. 24. Filed Sept. 27, 1884. W. C. Robards, c'l'k, by D. West, dep.

Copy of voucher.

Form 41. Memorandum.

To J. Duke: From pay-rolls.

Rio Grande & Pecos Railway Co., Laredo, Texas, Dec. 8, 1883.

Due for labor, shaft No. 1, Aug., '83	$33 75
Do. " " San Tomas, Oct.	2 86
Do. " " do. Nov.	4 00
Total	$40 61

Forty $\frac{61}{100}$ dollars.

ED. L. WINSLOW, *Act Treas.*

LAREDO, *Dec.* 9, 1883.

E. Winslow, act. treas. R. G. & P. R. R.:

Please pay Dr. Wilcox amount due me for Octo.. 82 86. San Tomas.
" " Nov.. 4 00. " "
" " Aug.. 33 75. Shaft.

40 61

his
JULIO x DUKE.
mark.

Endorsed: No. 24. Filed Sept. 27, 1884. W. C. Robards, c'l'k, by D. West, dep.

61 Copy of voucher.

Form 41. Memorandum.

To E. Canselles, Esq'r. From pay-rolls.

Rio Grand- & Pecos Railway Co., Laredo, Texas, Dec. 8, 1883.

Due for labor, shaft No. 1, August, 1883	$88 35
" San Tomas, Oct., 1883	58 28
" do. Nov., 1883	49 55
Total	$206 18

Two hundred and six $\frac{18}{100}$ dollars.

R. G. & P. R. Co., Feb'y 9, 1884, Laredo, Texas.

ED. L. WINSLOW,
Act'g Treas.

LAREDO, *Dec.* 9, 1883.

E. Winslow, act. treas. R. G. & P. R. R.:

Please pay A. W. Wilcox amount due me for Oct.	58 28
" " " Nov.	49 55
" " " Aug.	98 35
Total	$206 18

R. G. & P. R. R. Co., Feb'y 9, 1884, Laredo, Texas.

his
ELIGHT x CANNELIS.
mark.

Copy of voucher.

Form No. 41. Memorandum.

To Treas. R. G. & P. R. R.:

From Rio Grande & Pecos Railway Co., Laredo, Texas, Dec. 12, 1883.

Henry Spengler & Co.:

Hunt mine, muster rolls $64 05

Please pay to Dr. A. W. Wilcox the above amount, as per mem'r, $6,405, due us for work in Hunt mine, November, 1883.

HENRY SPENGLER & CO.

62 Copy of voucher.

Form 41. Memorandum.

To George Thompson from Rio Grande & Pecos Railway Co, Laredo, Texas, Dec. 21, 1883.

October roll, carpenter	$16 10
" " "	26 15
	$42 25

The above amount, forty-two $\frac{25}{100}$ dollars, is due as per pay-rolls R. G. & P. *R* R'y.

GEORGE SACKET,
Treas. R. G. & P. R. R.

Feb'y 9, 1884, Laredo, Texas.

Endorsed: Geo. Thompson.

Copy of voucher.

Rio Grande & Pecos Railway Co. to John P. Whitehead.

To professional services rendered during the months of Sept. & Oct., 1883	$150 00
By Cash	40 00
Balance due	$110 00

Approved. W. H. HUNGELFORD, *Treas.*

Endorsed: Laredo, Texas, Dec. 24, 1883.

For value received, I hereby transfer the within account to Mrs. W. C. Jones.

JNO. P. WHITEHEAD.

Endorsed: Received on the within account fifty dollars ($50.00). Pay within account to Dr. A. W. Wilcox. June 1, 1884. Mrs. W. C. Jones.

Copy of voucher.

Nov. 28, 1883.

Rio Grande & Pecos Railway due George Thompson (discharged) for labor.

63	Month of November, 1883, as foreman carpenter, $27\frac{4}{10}$ days, at $4 per day	$109 60
Deduct		21 94
	Balance due	$87 66

GEO. THOMPSON, *Foreman.*

Approved.

W. H. HUGERFORD, *Treas.*

Not negotiable.

R. G. & P. *R.* R'y Co. Feb'y 9, 1884, Laredo, Texas.

Endorsed: Geo. Thompson.

Copy of voucher.

$33.19 M'x.

Due Marcos Hernandez, for labor during the month of June, 1883, thirty-three $\frac{19}{100}$ dollars mx., Carbone station.

ED. L. WINSLOW, *Act. Treas.*

R. G. & P. *R.* R'y Co. Feb'y 8, 1884, Laredo, Texas.

Endorsed: Marcos x Hernandez.
his
mark.

Copy of voucher.

$24.37 M'x.

Due Antonio Rodrigues for labor, month of Aug. (McCarty, rolls), twenty-four $\frac{37}{100}$ dollars, Mex.

ED. L. WINSLOW, *Act. Treas.*

Rio Grande & P. R. R. Co. Feb'y 8, 1884. Laredo, Texas.

Endorsed: Antonio Rodrigues.

Copy of voucher.

$405, M'x.

Due H. Lopez for labor month of August, 1883, (McCarty rolls), four $\frac{05}{100}$ Mex. dollars.

ED. L. WINSLOW, *Act. Treas.*

R. G. & P. R. R. Co. Feb'y 8, 1884, Laredo, Texas.

Endorsed: H. Lopez.

64 Copy of voucher.

$36.75.

Due Pedro Lugano for labor at Hunt mine for month of July, 1883, thirty-six $\frac{75}{100}$ dollars.

ED. L. WINSLOW,
Act. Treas.

R. G. & P. *R.* R'y Co. Oct. 28th, 1883, Laredo, Texas.

Endorsed: Pedro his x mark. Lugano.

Copy of voucher.

Aug.	17	50	M'x.
Sept.	5	32	"
	$22	82	

Due A. Vidannie for labor, Aug. & Sept. (McCarty) twenty-two $\frac{82}{100}$ M'x. dollars.

ED. L. WINSLOW,
Act. Treas.

R. G. & P. *R.* R'y Co. Oct. 8, 1883, Laredo, Texas.

Endorsed: Alvorto Vidannie.

Copy of voucher.

June	$14	50	Corp.
July	10	25	Shop.
	24	75	

Due J. Bannor for labor, months of June & July, twenty-four $\frac{75}{100}$ dollars.

ED. L. WINSLOW,
Act. Treas.

R. G. & P. *R.* R'y Co. Sept. 12, 1883, Laredo, Texas.

Endorsed: Jas. Bannor.

Copy of voucher.

$7.50 M'x.

Due J. Salaz for labor, month of August (McCarty) seven $\frac{50}{100}$ dollars.

ED. L. WINSLOW, *Cashier.*

R. G. & P. *R.* R'y Co. Feb'y 9, 1884, Laredo, Texas.

Endorsed: J. his x mark. Salaz.

Copy of voucher.

$6.40 U. S. C.

65 Due M. Norrice for labor in month of October, 1883 (McCarty), six $\frac{40}{100}$ dollars.

ED. L. WINSLOW,
Act'g. Treas. R. G. & P. R'y Co.

R. G. & P. R'y Co., Feb'y 9, 1884, Laredo, Texas.

Endorsed: M. his x mark Norrice.

Copy of voucher.

June	$9 00	Mex.
July	13 50	"
	22 50	"

Due M. Reyes for labor (McCarty), during months June & July, 1883, twenty-two $\frac{50}{100}$ dollars.

ED. L. WINSLOW,
Act. Treas. R. G. & P. R'y Co.

R. G. & P. R'y Co. Feb'y 8, 1884, Laredo Texas.

Endorsed: M. his x mark. Reyes.

Copy of voucher.

Shaft No. 1. Sept. 26, 1883. Rio Grande & Pecos Railway.

Due Mike Grimes (discharged) for labor in month of Sept., 1883, as labor- on track, twenty-two (22) days, at $1.50 per day	$33 00
Deduct board	18 72
Balance due	$14 28

DAN. McCARTY, *Foreman.*

R. G. & P. R'y. Feb'y 9, 1884, Laredo, Texas.

Approved. W. H. HUNGERFELD, *Treas.*

Endorsed: Mike Grimes.

Copy of voucher.

Form 41. Memorandum.

To Ed. L. Winslow, act'g treas. Rio Grande & Pecos Railway Co., from Winslow, Rio Grande & Pecos Railway Co.:

66 LAREDO, TEXAS, *Dec.* 7, 1373.

Please pay to Dr. A. W. Wilcox, or order, thirty dollars for 4 boxes cigars, $25.00, cash loaned, $5.00, and charge same to my account.

ED. L. WINSLOW.

Laredo, Texas, Dec. 7, 1883. Accepted. Credit given on books R. G. & Pecos R'y Co.

E. L. WINSLOW,
Act'g Treas.

Copy of voucher.

Shaft No. 1. Oct. 16, 1883. Rio Grande & Pecos railway.

Due James Moran (discharged) for labor in month of October, 1883, as labor- on track, 10 days, @ $1.50 per day	$15 00
Deduct board	10 23
Balance due J. M.	4 77

DAN. McCARTY, *Foreman.*

R. G. & P. R'y Co. Feb'y 9, 1884, Laredo, Texas.

Approved. W. H. HUMERFORD, *Treas.*

(Not negotiable.)

Endorsed: James Moran.

Copy of voucher.

No. 35. Shaft No. 1. Sept. 19, 1883. Rio Grande & Pecos Coal Mines.

Due Eliza Comsallas (discharged) for labor in month of September, 1883, nineteen days, at $— per day	$42 00
Deduct	1 93
Balance due	40 07

T. C. MORTON.

R. G. & P. R'y Co. Feb'y 9, 1884, Laredo, Texas.

Approved. W. H. HUMERFORD, *Treas.*

(Not negotiable.)

Endorsed: E. his x mark. Camiselles.

5—1008

67 Shaft No. 1. Oct. 23, 1883. Rio Grande & Pecos railway.

Due Ben. Brown (discharged) for labor in the month of October, 1883, as labor on track, two and a half days ($2\frac{1}{2}$), @ $1.50 per day, $3.75, balance due $3.75.

DAN McCARTY, *Foreman.*

R. G. & P. R'y, Co. Feb'y 9, 1884, Laredo, Texas.

Approved. W. H. HUMMERFORD, *Treas.*

Not negotiable.

Endorsed: Ben. his x mark. Brown.

Copy of voucher.

Laredo, Texas, Sept. 24, 1883. Rio Grande & Pecos railway.

Due Wm. H. Heston for labor in month of September, 1883, as locomotive fireman, twenty-one days, at $1.66	$34 86
Deduct	16 84
Balance due	$18 02

WILLIAM PITTS, *M. M.*

R. G. & P. R'y. Feb'y 9, 1884, Laredo, Texas.

Not negotiable.

Endorsed: W. H. Heston.

Copy of voucher.

Shaft No. 1. September 26, 1883. Rio Grande & Pecos railway.

Due R. Pend (discharged) for labor in month of Sept., 1883, as labor on track, 7 days, @ $1.50 per day	$10 50
Deduct board	4 48
Balance due R. P.	6 02

DAN McCARTY, *Foreman.*

R. G. & P. R'y, Feb'y 9, 1884. Laredo, Texas.

Approved. W. H. HUMMERFORD, *Treas.*

Not negotiable.

Endorsed: R. his x mark. Pend.

68 Copy of voucher.

Shaft No. 1. October 31, 1883.

Due Peter Renner (discharged) for labor in the month of October, 1883, as labor[er] on track, seven and a half days (7½ days), @ 1.50 per day	$11 25
Deduct	00 00
Balance due	$11 25

DAN. McCARTY, *Foreman.*

R. G. & P. R'y. Feb'y 9, 1884. Laredo, Texas.

Approved.

W. H. HUMMERFORD, *Treas.*

Not negotiable.

Endorsed: Peter Renner.

Copy of voucher.

Shaft No. 1. Dec. 12, 1883. Rio Grande & Pecos Coal Mines.

Due William Morris for labor in the month of December, 1883, as engineer, eleven days, at $3.25 per day	$35 75
Deduct board	14 16
Balance due	21 59

E. D. BIRNEY,
Foreman, Superintendent of Mines.

R. G. & P. R'y. Feb'y 9, 1884, Laredo, Texas.

Approved.

W. H. HUMMERFORD, *Treas.*

Not negotiable.

Endorsed: Wm. Morris.

Copy of voucher.

Rio Grande & Pecos Coal Mines. Shaft No. 1. Nov. 30, 1883.

Due Alberto Diaz for labor in the month of November, 1883, as blacksmith, 20½ days, at $2 per day	$41 00
Deduct board	25 13
Balance due	15 87

A. E. De BIRNEY, *Foreman.*

R. G. & P. R'y. Feb'y 9, 1884, Laredo, Texas.

Not negotiable.

Endorsed: Alberto Diaz.

69 Copy of voucher.

Rio Grande & Pecos Coal Mines.

Due O. Powers for labor in month of November, 1883, as laborer, 9 days, @ $2.50 per day	$22 50
Deduct board	10 00
Balance due	12 50

A. E. DE BIRNEY, *Foreman.*

R. G. & P. R'y. Feb'y 9, 1884, Laredo, Texas.

Approved. W. H. HUMMERFORD, *Treas.*

Not negotiable.

Endorsed: O. his x mark. Powers.

Copy of voucher.

New Shaft, June 30, 1883. Rio Grande & Pecos railway.

Due Filippe O. Varrinas (discharged) for labor for the month of June, 1883, as labor- on section, twelve days, @ $1.50 per day	$18 00
Deduct store and board	15 75
Balance due F. V.	2 25

DAN. McCARTY, *Foreman.*

R. G. & P. R'y. Feb'y 9, 1884, Laredo, Texas.

Approved. W. H. HUMMERFORD, *Treas.*

Not negotiable.

Endorsed: Filippe O. Varrinas.

Copy of voucher.

Shaft No. 1. Sept. 19, 1883. Rio Grande & Pecos Coal Mines.

Due David Davis (discharged) for labor in month of Sept., 1883, as miner	$48 40
Deduct	18 06
Balance due	30 34

T. C. MORTON.

R. G. & P. R'y. Feb'y 9, 1884, Laredo, Texas.

Approved. W. H. HUMMERFORD, *Treas.*

Not negotiable,

Endorsed: David Davis.

70 Copy of voucher.

Shaft No. 1. October 27, 1883. Rio Grande & Pecos railway.

Due Juan Morales (discharged) for labor in the month of October, 1883, fifteen d'ys (15), at 1.50 per day	$22 50
Deduct for board	15 00
Balance due J. M.	7 50

DAN. McCARTY, *Foreman.*

R. G. & P. R'y. Feb'y 9, 1884, Laredo, Texas.

Approved.

W. H. HUMMERFORD, *Treas.*

Not negotiable.

Endorsed: Juan his x mark. Morales.

Copy of voucher.

Shaft No, 1. Sept. 19, 1883. Rio Grande & Pecos railway.

Due Pat Collins (discharged) for labor in month of March, 1883, as laborer on track, twenty-two and a half days (22½), at $1.50 per day	$33 75
Deduct board	22 23
Balance due	11 52

DAN. McCARTY, *Foreman.*

R. G. P. R'y. Feb'y 8, 1884. Laredo, Texas.

Approved.

W. H. HUMMERFORD, *Treas.*

Not negotiable.

Endorsed: Patrick Collins.

Copy of voucher.

August 25, 1883. Rio Grande & Pecos railway.

Due R. Suarez (discharged) for labor in the month of Aug., 1883, as laborer on track 20 d'ys, @ $1.50	$30 00
Deduct board	16 10
Balance due R. S.	13 90

DAN. McCARTY, *Foreman.*

R. G. & P. R'y. Feb'y 9, 1884, Laredo, Texas.

Approved.

W. H. HUMMERFORD, *Treas.*

Not negotiable.

Endorsed: R. his x mark. Suarez.

71 Copy of voucher.

Shaft No. 1. Sept. 20, 1883. Rio Grande & Pecos Coal Mines.

Due Bruno Reyes for labor in month of Sept., 1883, as laborer, four days (4), at $1.75 per day	$7 00
Deduct	
Balance due	$7 00

T. C. MORTON.

R. G. & P. R'y. Feb'y 9, 1884, Laredo, Texas.

Approved. O. SMITH.

Not negotiable. BRUNO REYES.

[Written across the face in red ink:] Seven dollars.

Copy of voucher.

Shaft No. 1. Sept. 10, 1883. Rio Grande & Pecos railway.

Due S. Alumoras (discharged) for labor in the month of Sept., 1883, as laborer, seven and a half days ($7\frac{1}{2}$), at $1.50 per day	$11 75
Deduct	6 50
Balance due	5 05

DAN McCARTY,
Master Foreman.

R. G. & P. R'y. Feb'y 9, 1884, Laredo, Texas.

Not negotiable.

Approved. W. H. HUMMERFORD, *Treas.*

Endorsed: Santiago Alumoras.

[Written across the face in red ink:] Five $\frac{25}{100}$ dollars.

Copy of voucher.

Shaft No. 1. Sept. 19, 1883. Rio Grande & Pecos Coal Mines.

Due Sam. D. Smith (discharged), for labor in the month of Sept., 1883, $9\frac{3}{4}$ days, @ $2.75 per day	$26 81
Deduct	13 93
Balance due	12 88

T. C. MORTON.

R. G. & P. R'y. Feb'y 9, 1884, Laredo, Texas.

Approved. W. H. HUMMERFORD, *Treas.*

Not negotiable.

Endorsed: S. D. Smith.

[Written across face in red ink:] Twelve $\frac{88}{100}$ dollars.

72 Copy of voucher.

Aug. 24, 1883. Rio Grande & Pecos Railway.

Due Mathias Macias (discharged) for labor in the month of August, 1883, as laborer on track, seven days (7), at $1.50 per day	$10 50
Deduct board	3 75
Balance due M. M.	$6 75

DAN. McCARTY, *Foreman.*

R. G. & P. R'y. Feb'y 9, 1884, Laredo, Texas.

Approved.

W. H. HUMMERFORD, *Treas.*

Not negotiable.

Endorsed: Mathias his x mark Marcias.

Copy of voucher.

Shaft No. 1. Sept. 10, 1883. Rio Grande & Pecos coal mines.

Due Albert Bolded for labor in month of September, 1883, as laborer, four days (4), at 2.25 per day	$9 00
Deduct	75
Balance due	$8 25

T. C. MORTON, *Foreman.*

R. G. & P. R'y, Feb'y 9, 1884, Laredo, Texas.

Not negotiable.

Endorsed: Albert Bolded.

Copy of voucher.

San Tomas mine, Sept. 4th, 1883.

This is to certify that the bearer of this, W. H. Smith, has a balance due him on August pay-roll of thirty-eight $\frac{81}{100}$ dollars.

W. S. GILLIAM.

B. G'd & P. R'y, Feb'y 9, 1884, Laredo, Texas.

Endorsed: Pay to A. W. Wilcox. W. H. Smith.

Laredo, W. S. Gilliam, I have transferred my pay for August, $38.81, to A. W. Wilcox. So cancel*l* my order for you to collect.

W. H. SMITH.

73 No. 24. Exhibit "D." Filed with special master, Sept. 4, 1884.

LAREDO, TEXAS, *Sept.* 4, 1883.

Mess. A. W. Wilcox & Co.

In acc't with R. G. & P. Mining Co. and R'y Co.

San Tomas ac.

1883.			U. S. C'y.	M'x.
March	31.	Cr. by statement rendered	535 99	
April	30.	" pay-roll, cr. Ap'l, San T.	6 25	
May	31.	" " " May, "	6 50	
June	30.	" " " June, "	11 75	
July	31.	" " " July, "	3 75	
"	"	voucher ac. No. 155, hay	10 00	
		Total	$574 24	

Hunt mine and shaft ac.

April	30.	Cr. by pay-roll, cr. Hunt mine, Ap'l	8 75	
"	"	voucher ac., mdse	17 00	
"	"	" empty bbls., (M'ch 29)	32 00	
May.	31.	Cr. by voucher, ac. pay-roll cr. Hunt mine, May	6 00	
"		Cr. by voucher ac., mdse, May	36 70	
June	30.	" " " June	194 28	
"	"	" hay, shaft	6 00	
"	"	pay-roll cr. Hunt mine, June	4 00	
July	31.	" " " July	4 00	
"	"	voucher ac., mdse. "	26 50	
"	"	" DeB. & San T.	9 00	
		Total	$344 23	

R. G. & P. R'y Co.

Feb'y	21.	Cr. by statement rendered	$169 58	
		" voucher ac., Feb'y	15 35	
March	3.	" " March	11 25	
April	30.	" " Ap'l	150 50	
	May	31. Cr. by voucher ac., May	16 30	
74	June	30. Cr. by voucher, ac. mdse. June	$46 25	
	July	31. " " " " July	34 95	
		Total	$444 18	

Recapitulation.

Balance due from San Tomas ac.	$574 24	
" " " Hunt, mine and Sh. ac.	344 23	
" " by ac.	444 18	
Grand Total		$1,362.65

E. & O. E.—Winslow.

Copy from letter-book, marked Statement, page 139.

LAREDO, TEXAS, *Sept.* 4, '83.

A. W. Wilcox & Co., in ac. with R. G. & P. Ry. Co.

1883		U. S. Cy.	Mex.
Feb'y 21.	Cr. by statement rendered	1,497 46	75 00
May 31.	" cash receipts given	160 44	120 00
June 30.	" " " "	106 45	85 92
" "	" " " "	295 55	128 10
" "	" " " "	360 95	87 69
July 31.	" " " "	45 87	
" "	" " " "	89 28	
" "	" " " "	239 33	12 90
" "	" " voucher ac. hay corral	10 00	
Aug. 31.	" " cash receipts given	265 24	
" "	" " " "	100 00	
	Total credits	3,170 57	509 61
	Contra.		
March 31.	To 3½ bbls. cement furnished	16 10	
		3,154 47	509 61

E. & O. E.—Winslow.
Copy from letter-book, marked statements, page 140.

75 LAREDO, TEXAS, *Dec.* 10, '83.

A. W. Wilson, in account with R. G. & P. R'y Co.:

1883.		U. S. C'y.	Mex.
Sept. 4.	Cr. by statement rendered	$3,154 47	509 61
20.	" " loan		18 00
" "	" time checks and orders	160 23	260 13
" "	" loan		30 00
" "	" deductions per statement	8 00	
" "	" Boner check	75 25	
" "	" Aremengol		92 85
Oct. 16.	" time checks & orders	446 96	163 83
Nov. 30.	" Ward order	65 00	
" "	" Winslow order	30 00	
" "	" Brown's bill	16 10	
" "	" order Hungerford	450 00	
" "	" Ward to Goyne	40 00	
" "	" Grant & Co. bill	64 33	
" "	" bill canvass		59 25
" "	" voucher hay corral, June	25 00	
" "	" " Aug	97 14	
" "	" " May	20 00	
	Total credits	4,652 48	1,133 67

Contra.

Sept.	30.	Cash			100	00	20 00
		Nett balance			4,552	48	1,113 67

E. & O. E.—Winslow.

Copy from letter book, marked Statement, page 165.

76 LAREDO, TEXAS, *Dec.* 10, '83.

A. W. Wilcox in acc. with R. G. & P. R'y Co.

San Tomas.

1883.

				U. S. Cy.
Sept.	4.	Cr. by	balance as per statement	$574 24
Oct.	30.	"	pay-roll, cr. August	1 50
		" " "	Sept	1 75
		"	voucher ac., 168 corn, &c.	23 17
		" " "	179 San Tomas store	3 05
			Total	$603 71

Hunt mine & shaft.

Sept.	4.	Cr. by	balance as per statement	344 23
		" "	pay-roll, cr. H. mine, Aug.	8 00
		" "	Van Ward, A. W. W.	12 00
		" "	mdse August	127 10
		" " "	Sept.	2 00
		" " "	Oct.	*5 75
		" "	Fuselman H. mine, Oct.	5 25
		" "	voucher, mdse, Nov. & Ward	14 85
			Total	519 18

A. G. & P. R'y Co.

Sept.	4.	Cr. by	balance statement rendered	$444 18
	30.	" "	stoppages	2 75
Nov.	30.	" "	"	17 55
Dec.	10.	" "	Moran	4 00
		" "	voucher, mdse, Aug.	18 15
		" " "	Sept.	16 50
		" " "	Oct.	6 75
		" " "	Nov.	6 85
			Total	516 73

77 *Recapitulation.*

Balance due from			San Tomas	$603 71
"	"	"	Hunt mine	519 18
"	"	"	R'y ac.	516 73
			Grand total	1,639 62

E. & O. E.—Winslow.

Copy from letter-book, marked Statement, page 166.

Endorsed: Exhibit "D." No. 24. Filed Sept. 4, 1884. S. G. Newton, special master. Filed Sept. 27, 1884. W. C. Robards, cl'k, by D. West, dep.

* This includes $3.75.—Moran.

78 *Report of Special Master S. G. Newton. Filed Sept.* 24, 1884.

In Circuit Court of the United States for the Western District of Texas.

C. B. WRIGHT
vs.
THE RIO GRANDE AND PECOS RAILWAY COMPANY *et als.* } No. 24.

To the Hon. E. B. Turner, judge:

In pursuance of a decretal order, made and entered in this cause, by which I was appointed special master for the purpose of reporting upon all claims that should be presented to or filed with me against the Rio Grande and Pecos Railway Company, claiming to operate as liens against the Rio Grande and Pecos railroad and its equipments, prior to the lien of the first mortgage bondholders, I S. G. Newton, special master as aforesaid, do respectfully report that in accordance with the directions of said order I caused a notice to be published in the Laredo Times, a newspaper published in Laredo, Webb county, Texas, over four successive weeks, commencing on the 30th day of June, 1884, a copy of which notice is as follows, to wit:

Notice.

Having been appointed by the Hon. E. B. Turner, district judge of the United State for the western district of Texas, special master in equity, cause, No. 24, on the docket of the circuit court of said western district of Texas, entitled E. B. Wright *vs.* the Rio Grande
79 and Pecos Railway Company and the Mercantile Trust Company of New York, for the purpose of examining into and reporting upon all preferred claims against said Rio Grande and Pecos Railway Company prior to those of the bondholders of the first-mortgage bonds issued by said railway company that may be presented to and filed with me, I hereby notify and call upon all persons having or asserting any liens or claims, by judgment or otherwise, entitled, as against said holders of said first-mortgage bonds, to preference of payment out of the proceeds of said road, to forthwith present and file such liens or claims with me, at San Antonio, Texas, to the end that I, the said special master, may examine into and report upon the same to the said district judges at or before the next term of the said circuit court to be held at San Antonio.

Witness my hand, this twenty-fourth day of June, A. D. 1884.

S. G. NEWTON,
Special Master.

I further respectfully report that claims Nos. one (1) to seventy-

seven (77) *was* filed with me, and that, pursuant to a summons duly issued, I have been attended by the parties claimants and the complainant and their respective co-nsels, and, after taking due proofs, I find and report as specifically as set forth in my findings and report hereto attached on each seperate claim presented to or filed
80 with me.

There are many of these claims which are good and valid demands against the Rio Grande & Pecos Railroad Co., and I have so reported them, which, under the strict constrictions given by our appellate courts to the railroad laborers' lien act of 1879 (acts of 1879, Texas Legislature, chapter 12, page 8), I am precluded from reporting a lien in favor of, prior to that of, the first-mortgage bondholders. I have incorporated in the record all the facts I could ascertain in relation to them, to the end that should a lien be decreed under the equitable powers of the court they may be passed on without further reference.

I would further respectfully report that no testimony was introduced in support of claims number two (2) of Shepherd Bros. & Co. and claims No. forty-five (45) of Pennock Bros., and no one represented either of said parties.

In regard to claim No. fifty-nine (59), Juan Reyes, and claim No. seventy-three (73) of Henry Hein, I am satisfied they have a preference lien as to a portion of these claims, but as to what amount I was unable to ascertain.

All of which is respectfully submitted.

S. G. NEWTON,
Special Master in Equity.

81 *Claim No. 1 of A. W. Wilcox.*

This claim is on a judgment of the district court of Webb county for fifty-five hundred and twenty-six and $\frac{78}{100}$ dollars, with ten per cent. interest from the 12th day of January, 1884; a lien on the Rio Grande and Pecos railroad and its equipments is declared and foreclosed.

The first-mortgage bondholders attack the judgment on the grounds enumerated in their written objections filed in the papers.

The claimant introduced in evidence—

First. Certified copy of judgment.

Second. Copy of petition in the case.

Third. Copy of promissory note on which the judgment was rendered.

The first-mortgage bondholders introduced in evidence—

1st. The Exhibits C and D; also vouchers and time checks on which the note was predicated.

Second. Mark L. Shaffenburg, the secretary of the Rio Grande and Pecos R. R. Co. at the time the note was executed.

82 The claimant was then introduced and testified; the testimony of these two witnesses will be found in the papers marked "evidence."

I found from the evidence that the note on which the judgment

was predicated includes amounts not secured by a lien under the act of 1879, as well as on amounts in which a lien is given under said act.

I further find there is no reservation of a lien in said note.

I do, therefore, in regard to this claim, respectfully report that the said A. W. Wilcox has a good and valid claim against the Rio Grande and Pecos Railroad Company for the sum of fifty-five hundred and twenty-six $\frac{78}{100}$ dollars, with 10% interest from the 12th day of January, 1884, but that he has no lien prior to that of the first-mortgage bondholders.

All of which is respectfully submitted.

S. G. NEWTON,
Special Master in Equity.

Filed September 27th, 1884.

W. C. ROBARDS, *Clerk.*

83 *Objections to Report of Special Master. Filed Oct. 6th*, 1884.

In U. S. Circuit Court, Western District of Texas. In Equity.

C. B. WRIGHT
vs.
R. G. & P. R. R. Co. *et al.* } No. 24.

Exceptions taken by A. W. Wilcox to the report of special master, S. G. Newton, Esq'r, filed in the above-entitled cause September 27, 1884.

First Exception. Said special master errs in his finding and conclusion that the claim (No. 4) of said A. W. Wilcox is not a lien prior to that of the first-mortgage bondholders of said company, his conclusion and finding in this respect being contrary to the evidence submitted to and reported by him touching said claim, and being contrary to the law as applicable thereto.

Second Exception. The conclusion and finding of said special master that the judgment of the district court of Webb county in favor of said A. W. Wilcox was predicated upon and included amounts not secured by a lien under *under* the act of the Legislature of Texas of 1879 is contrary to the evidence before said special master, and is contrary to law in this, that said special master, by his said finding, nullifies the legal force and effect of the said judgment.

84 Third Exception. Said report of said special master insofar as it relates to the said claim of the said A. W. Wilcox is not warranted by the order of reference, being an attempt to pass upon legal questions which can only be determined by this court, and in this respect is outside of any authority conferred upon said master by said reference or vested in him by the rules and practice in such cases.

For the exceptions aforesaid, and for such others as may be examined by this honorable court upon the hearing, as well as upon the principles of equity as applicable to the facts relating to the claim of said A. W. Wilcox, — prays this honorable court to sustain

said exceptions, and to order and adjudge the said claim to be paid out of any proceeds which now are or may come into the hands of the receiver of said road, or to make such other or further order as may secure a speedy settlement of the said claim.

A. J. PEELER,
Solicitor and of Counsel for A. W. Wilcox.

Endorsed: No. 24. C. B. Wright *vs.* R. G. & P. R. R. Co. Objections to report of special master. Filed Oct. 6, 1884. W. C. Robards, clerk.

85 *Petition to Allow Bill to be Dismissed Against the Mercantile Trust Company of New York. Filed Oct. 20, 1884.*

In the Circuit Court of the United States for the Western District of Texas.

C. B. WRIGHT
vs.
THE RIO GRANDE AND PECOS RAILWAY COMPANY, THE MERCANTILE TRUST COMPANY OF NEW YORK, *et al.*

And now comes C. B. Wright, complainant in the above-entitled cause, and respectfully asks that this bill may be dismissed against the Mercantile Trust Company of New York, because—

1st. The said Mercantile Trust Company has not been served with a supœna or other process of this honorable court, not having been at any time, since the commencement of this suit, within its jurisdiction.

2d. Because, doubts having arisen as to whether in accordance with the laws of the State of Texas the said trust company, being incorporated by and domiciled in the State of N. Y., could act as trustee under the mortgage, securing the bondholders complainant to the property, rights, and franchises of the Rio Grande and Pecos R. R. Co., or enter upon the bonds and property of the said company, the said Rio Grande and Pecos Railway Company, as in accordance with
86 *with* article 10 of the said mortgage, by and with the consent of the majority in interest of the bondholders secured by the said first mortgage in writing, remove said trustee and appointed William S. Hassell in its stead as trustee under the said mortgage, and the said William S. Hassell has duly accepted said trust.

October 10, 1884.

GEORGE BIDDLE,
Attorney for C. B. Wright, Complainant.

Endorsed: Circuit court, U. S., Western district of Texas. C. B. Wright *et al. vs.* The Rio Grande & Pecos Railway Co. Petition to allow bill to be dismissed against the Mercantile Trust Company of New York. Filed Oct. 20, 1884. W. C. Robards, clerk. By D. West, deputy. George Biddle, A. Sidney Biddle, attorneys-at-law, for complainant, 208 South Third street, Philadelphia.

87 *Order Allowing William S. Hassell, the Trustee Appointed under the First Mortgage of the Company, to be made Party Plaintiff in the Suit. Filed Oct.* 20, 1884.

In the Circuit Court of the United States for the Western District of Texas.

C. B. WRIGHT
vs.
THE RIO GRANDE AND PECOS RAILWAY CO., THE MERCANTILE TRUST CO. OF NEW YORK, *et al.*

And now comes William S. Hassell, the trustee duly appointed under the provisions of the mortgage securing the first and second mortgage bondholders heretofore executed and delivered by the Rio Grande & Pecos R. R. Co., and asks leave of this honorable court to be made a party complainant in the bill heretofore filed in this court by C. B. Wright on behalf of himself and all other creditors and first-mortgage bondholders of the said R. R. Co., and to appear and have his appearance forthwith entered in said cause, and further prays this honorable court to enter the decree prepared on behalf of the first-mortgage bondholders and other creditors holding liens prior thereto against the property and franchises of the said R. R. Co., and which he exhibits herewith by his counsel, John James Wilkinson, Esq'r.

JNO. J. WILKINSON,
Att'y for Wm. S. Hassell, Trustee.

88 Endorsed: U. S. C. C. western district of Texas. Wright *vs.* Rio Grande & Pecos Railway Co. Order allowing William S. Hassell, the trustee appointed under the first mortgage of the company, to be made party plaintiff on the suit. George Biddle, A. Sydney Biddle, attorn-ys-at-law, 208 South Fifth street, Philadelphia. Filed Oct. 20th, 1884. W. C. Robards, clerk. By D. West, dep.

Agreement to Allow Wm. S. Hassell, lately Appointed Trustee under Mortgage of R. R. Co., to Intervene in place of Mercantile Trust Co. of New York, and also to fix Times of Advertisement for sale under decree. Filed October 20, 1884.

In the Circuit Court of the United States for the Western district of Texas.

C. B. WRIGHT
vs.
THE RIO GRANDE AND PECOS RAILWAY CO.

It is hereby agreed between the parties to the above suit that William S. Hassell, of Philadelphia, who has been appointed trustee under the mortgage of the Rio Grande and Pecos Railway Company, in place of the Mercantile Trust Company, be allowed to intervene in the above cause as a party complainant, and the said bill be dismissed as to the Mercantile Trust Company, one of the defendants.

89 *Change of Notice of Adv'rti'm't.*

It is further agreed, and the parties hereby consent to and ask the court to order, that the sale under the first mortgage and decree of foreclosure thereunder be made at the city of New York after three weeks advertisement, instead of six weeks, as is required by the terms of said mortgage, for the reason that the ten days given for redemption must expire before notice of sale can be published, and that the daily expenses incurred by the receiver will be so great that it will compell a sacrifice of the rights of the bondholders and creditors in order to raise the money actually necessary to satisfy receiver's expenses if allowed to run on six weeks longer and then await confirmation of the sale by the court.

GEORGE BIDDLE,
On behalf of Complainants.
THE RIO GRANDE AND PECOS RAILWAY COMPANY,
By H. M. HENNAN, *Its Attorney.*

Endorsed: Circuit court U. S., western district of Texas. C. B. Wright *et al. vs.* The Rio Grande and Pecos Railway Co. Agreement to allow William S. Hassell, lately appointed trustee under mortgage of R. R. co., to intervene in place of Mercantile Trust Co. of New York, and also to fix time of advertisement for sale under decree. Filed Oct. 20, 1884. W. C. Robards, clerk, by D. West, deputy.

90 *Agreement of Parties as to Decree. Filed Oct.* 20, 1884.

In the Circuit Court of the United States for the Western District of Texas. Of Sessions, 1884.

WILLIAM S. HASSELL, Trustee by Substitution, *on* and C. B. WRIGHT, Plaintiffs,
vs.
THE RIO GRANDE AND PECOS RAILWAY COMPANY. } No. —.

It is agreed by the parties to the said suit that the following decree be entered forthwith by the court.

Oct. 9, 1884.

GEO. BIDDLE,
BIDDLE & WARD,
GEO. BIDDLE,
For Complainants.
For Holders of Receivers' Certificate- Representing all the Holders.
GEORGE BIDDLE,
For H. Cavalier Smith, Receiver.
JNO. J. WILKINSON,
Of Counsel with Wm. S. Hassell, Trustee, under Mortgages for all the Bondholders.
THE RIO GRANDE AND PECOS RAILWAY COMPANY,
By H. M. HERMAN, *Attorney.*

Oct. 10, 1884.

91 *Decree.*

In the Circuit Court of the United States for the Western District of Texas.

WILLIAM S. HASSELL, Trustee, and C. B. WRIGHT,
vs.
THE RIO GRANDE AND PECOS RAILWAY COMPANY.

And now, October 13th, 1884, this cause having been heard on bill and answer, and having been argued by counsel, it is finally ordered, adjudged, and decreed, any previous order inconsistant herewith to the contrary notwithstanding—

I. That the receiver's certificates heretofore authorized to be issued by the order of the court, together with interest thereon from the date of the issue of the same, at eight per cent. per annum, are the first lien upon the railroad, tolls, property, income, and estate of the Rio Grande and Pecos Railway Company.

II. That the principal of the said receiver's certificates, amounting to the sum of $50,000, with interest thereupon from the date of the said receivers' certificates at eight per cent. per annum, or so many of the same as may have been issued under the order of this court to purchasers thereof, is due and payable first out of the proceeds of the sale hereinafter ordered.

92 III. That the several liens decreed, or which shall be hereafter decreed by this court to have precedence as liens against the said railroad company over and prior to the holders of the first-mortgage bonds have, subject to the receiver's certificates above mentioned, the second lien upon the said Rio Grande and Pecos Railroad Company and its franchises, tolls, property, estates, and premises, and are due and payable out of the proceeds of the said sale after the payment of the receiver's certificates as herein above mentioned.

IV. That the mortgage in the bill of complaint mentioned, bearing date the 15th day of May, 1882, executed by the Rio Grande Pecos Railway Company to The Mercantile Trust Company, of the city of New York, and for which the exhibit attached to said bill is a true copy, is the next lien after those last above mentioned upon the railroad, tolls, franchises, property, income, estates, and premises therein mentioned, referred to, or described, and is effectually binding thereon; and that the holders of the bonds secured by said mortgage are entitled to the benefit of all the rights and securities thereby conferred.

V. That the principal of the bonds secured by the said first mortgage is six hundred thousand dollars; that on the first day of December, A. D. 1883, there were coupons of the said bonds due and unpaid amounting to $18,000; and that there was also interest due on said unpaid coupons amounting on October 1, 1884, to

93 $900; and there was also due coupons on said mortgage, due June 1st, 1884, $18,000; and interest due on said unpaid coupons up to and including October 1st, 1884, $360; making in all

for unpaid coupons, secured by said mortgage with interest thereon to said date, $37,260.

VI. That the said The Rio Grande and Pecos Railway Company do pay unto the holders of the said receiver's certificates the sums designated upon each of the said certificates, to wit, $1,000, not exceeding the total sum of $50,000, with interest from the date of issue of the same at eight per cent. per annum, and further do pay the amount of the several liens decreed, or which shall be hereafter decreed by this court, to have precedence as liens against the said railroad company, over and prior to the holders of the first mortgage bonds, and further do pay unto the first mortgage bondholders of said railway company, or to their trustee, or such substituted trustee as may be appointed by the majority of them under and by virtue of the indenture of mortgage, trustee thereunder, the said sum of six hundred and thirty-seven thousand two hundred and sixty dollars, so as aforesaid, as contained and decreed to be due on the 1st day of October, 1884, within ten days after the entry of this decree.

VII. That in default of said payment within the period aforesaid the railroad, property, estates, premises, appurtenances, and
94 franchises conveyed by said mortgage to the said The Mercantile Trust Company, of the city of New York, trustees named therein, including all the estate, rights, title, interest, property, claim, and demand of the said Rio Grande and Pecos Railway Company, and their said railroad in the State of Texas, beginning at or near Brownsville, in the county of Cameron, and running up the left bank or Texas side of the Rio Grande river, through the counties of Cameron, Hidalgo, Starr, Zapata, Webb, Maverick, Kinney, and Crockett counties, by the most practicable and eligible route, to the mouth or junction of the Pecos river with the Rio Grande river in Crockett county, in the State of Texas, with the right to connect with any line in the United States, and also the [right] to build branch lines, and also to construct and maintain docks and wharves, elevators, and warehouses in connection with said lines, and also all of the said road so far as the same may now be actually completed, and also all the franchises, lands, rights of way, railways, with their equipments, appurtenances, and accessions of every description, stations, shops, and structures of every kind whatsoever, together with all the tools, carts, animals, rails, fastenings, locomotives, cars, ties, railway machinery, and material of every kind used, or destined to be used, in the construction, maintenance, and operation of the same, and also all its twenty thousand acres of land in Webb county, in the State of Texas, and all mines and coal
95 therein and thereupon, and also all lands that it may have received, or is now or may be hereafter be entitled to receive, from the State of Texas in the aid of its construction, and which passed to the trustee named in the said indenture of mortgage, be exposed to sale at public vendue or outcry as one entire lot in the city of New York by William S. Hassell, Esq'r, of Philadelphia, trustee, to whom all needful authority for that purpose is hereby given, after notice of the time and place of sale and of the property

to be sold shall have been given by advertisement, inserted not less than three times a week, for four (4) weeks, in one or more newspapers published in the city of New York, and by advertisement, not less than once a week for four weeks, in the city of Laredo, Texas; and that the said advertisements shall be in the form hereinafter set out in the schedule hereto annexed and made a part of this decree, and that the following be the terms and conditions of the sale:

The property will be struck off to the highest and best bidder upon his signing the conditions of sale. Twenty-five thousand dollars of the purchase-money shall be paid when the property is struck off, and the balance within thirty days thereafter: Provided, however, if the purchaser or purchasers are the holders of receivers' certificates issued by order of the court, he or they shall be, and are hereby, authorized, after the payment of five thousand dollars,
96 in cash, to tender on account of the balance of the bid the said certificates, which shall be received by the said William S. Hassell, trustee, as cash: And provided further, That if the property shall bring a greater price than the total amount of said receiver's certificates, then if the purchaser or purchasers are the holders of first-mortgage bonds and maturing coupons, or either, secured by the aforesaid first mortgage, he or they shall be, and are hereby, authorized to receipt to the said William S. Hassell, trustee, for the dividend of the said balance of purchase-money payable on the said bonds and matured coupons, or either, after the payment and discharge of all liens prior to said first-mortgage bonds, the sums thus receipted for to be considered as paid in cash to the said William S. Hassell, trustee, and the said receipts to be an acquit-ance and discharge to him from all liability for the same. That said bonds or coupons to be delivered at the time of such receipts to the said William S. Hassell, trustee, and to be returned by him to the holders after the dividend thus receipted for shall have been endorsed thereon, the accrued interest on the said coupons from the date of their maturity to be added to the principal in estimating the dividend payable thereon; and in case the purchaser or purchasers shall have
97 paid any part of the purchase-money in first-mortgage bonds as aforesaid, it shall appear upon distribution of the proceeds of sale that creditors having liens prior to the said first-mortgage bonds are entitled to be paid out of the said balance of the purchase-money, then the purchaser or purchasers shall pay to the said William S. Hassell, trustee, the balance of the said purchase-money, or so much thereof as shall be necessary to pay the said creditors having liens prior to the first mortgage in cash, the said William S. Hassell, trustee, shall have the power, at the request of a majority, in value of the holders of the receiver's certificates or of the holders of the first-mortgage bonds, including over-due coupons, to adjourn the sale from time to time in his discretion; in case the terms of sale are not complied with by the bidder to whom the property has been struck off, the next highest bidder, who shall have signed the condition of the sale, shall have the option of taking the property at his bid upon paying or accounting in the manner aforesaid for the amount thereof within ten days after the ex-

piration of the aforesaid thirty days from the day of sale, and when the said purchase-money shall have been paid or receipted for, and the said sale shall have been confirmed by this court, upon return thereof being made by the said William S. Hassell, trustee, to the court, then the said William S. Hassell, trustee, shall execute or deliver to the purchaser or purchasers
98c of the said road, property, estates, premises, appurtenances, and franchises a good and sufficient deed or deeds granting and conveying the same unto him or them in fee simple, and the said purchaser or purchasers shall thereupon hold the same free and discharged from all liens and incumbrances whatever, and from any claim or demand of the Rio Grande and Pecos Railway Company, or of any trustee under the mortgage executed to secure the first-mortgage bondholders therein or thereto, by way of equity of redemption or otherwise, and the said Rio Grande and Pecos Railway Company shall from thenceforth be absolutely debarred and foreclosed of and from any such demand or claim.

VIII. It is further ordered that all sums received in cash by the said William S. Hassell, trustee, for or on account of the purchase-money of the premises, shall, after deducting all commissions, counsel fees, costs, and expenses incurred by the complainants in this proceeding, be paid into court, to be distributed under such order or reference that shall hereafter be made in respect thereto, and if any of the said purchase-money shall have been adjusted by the receipts of the holders of receiver's certificates or bonds or coupons as aforesaid, he shall file an account, setting forth the same, and the said William S. Hassell, trustee, has leave from time to time as he may be
99c advised or deem necessary for the further direction of the court in carrying out the terms of this decree.

IX. And it is further ordered that the costs of this suit be paid by the Rio Grande and *and* Pecos Railway Company.

Decree rendered and signed this 13th d'y of October, 1884.

DON A. PARDEE,
Circuit Judge.

Advertisement.

In the Circuit Court of the United States for the Western District of Texas, of —— Term, 18—. No. ——.

C. B. WRIGHT *et al.*
vs.
THE RIO GRANDE AND PECOS RAILWAY COMPANY.

Whereas the Rio Grande and Pecos Railway Co., by a mortgage bearing date the 15th day of May, 1882, and duly recorded, granted, and conveyed to the Mercantile Trust Co. of New York, their successors and assigns, the whole of the railroad, beginning at or near Brownsville, in the county of Cameron and State of Texas, and running up the left bank of Texas side of the Rio Grande river, through the counties of Cameron, Hidalgo, Starr, Zapata, Webb, Maverick, Vinney, and

Crocket counties, by the most practicable and eligible route to
100c *to* the mouth or junction of the Pecos river with the Rio Grande river, in Crocket county, together with the franchises, lands, rights of way, railways, stations, shops, locomotives, rolling-stock, tools, and materials of whatever kind destined to be used in the construction and operation of the concern, in trust for the benefit of the holders of bonds of the said company to the amount of six hundred thousand dollars, and interest thereon after to accrue thereon. And whereas by a certain decree entered by the circuit court of the United States for the western district of Texas in the above-entitled case it was declared that the receiver's certificates issued by the order of the said court with interest thereon at eight per cent., the total amount of said certificates, not exceeding $50,000, were a first lien upon the railroad franchises and property therein mentioned, and that whatever claims or liens should be declared by the said court now or hereafter to be liens prior and superior to the first-mortgage bonds of the said railway company were second in their lien — the said mortgage, and the bondholders thereunder, and secured thereby, had the next lien upon the said railroad, franchises, lands, property, and estates therein mentioned, and it was thereupon ordered that the said railway company should forthwith pay the amount of the said receiver's certificates, liens, as aforesaid, and the amount of the above-mentioned first-mort-
101c gage bonds, together with the coupons thereon due within ten days, and that on default being made by the said railway to pay the same within the period fixed by the said decree, the railroad property, land, appurtenances, and franchises conveyed by the said mortgage, including all the right of the said railway company to all of their railroad built or to be built in the State of Texas, and also in and to twenty thousand acres of coal lands in Webb county, Texas, should be exposed to sale by public vendue or outcry as one entire lot, in the city of New York, by William S. Hassell, trustee, to whom all needful authority for that purpose was thereby given, upon the terms and conditions therein mentioned and hereinafter set forth; and whereas default has been made by the said railroad company in the payment aforesaid of the said amount:

Now, therefore, notice is hereby given that under and by virtue of the said decree I, the said William S. Hassell, trustee therein mentioned, will, on the — day of December, 1884, at 12 o'clock a. m., at ——, in the city of New York, expose at public sale by vendue or outcry the whole of the railroad, together with the lands, depots, depot grounds, and buildings belonging thereto, and situate between the termini of the said railway and along the line of the same, including 20,000 acres of land in Webb county, and also all other lands, lots, stations, warehouses, turntables, water-tanks, pumps, shafts, coal mines, machinery, and also all the issues, incomes, and
102c profits of the said company, derivable from travel over said road, and also all of the locomotive-, cars, engines, tools, or other things used in the business or management of the said road, and also all the estate, right, title, interest, claim, and demand of the

said company in and to their railroad, and generally all of their property and franchises whatsoever, assigned and conveyed by the said mortgage or intended to be so, together with all equitable rights conveyed thereunder.

The railroad above described begins at or near Laredo, Webb county, Texas, and extends between 28 and 31 miles northwest thereof, together with about five miles, more or less, of grading, and also twenty thousand acres of land in the State of Texas, together with the coal mines and machinery thereon.

Terms of Sale.

The property will be struck off to the highest and best bidder, who shall sign the condition of sale. $25,000 of the purchase-money shall be paid when the property is struck off, and the balance within thirty days thereafter: Provided, if the purchaser or purchasers are the holders of receiver's certificates, he or they may, after the payment of five thousand dollars in cash, tender on account of the balance of the bid the said certificates, which shall be received by the said William S. Hassell, trustee, as cash: And provided further, That if said property shall bring a greater price than the total amount of said receiver's certificates, and the
103c purchaser or purchasers are the holders of bonds or matured coupons secured by said first mortgage, he or they may receipt to said William S. Hassell, trustee, for the dividend upon the balance of said purchase-money, payable on the said bonds or coupons, or either, after the payment and discharge of all liens prior to the said first-mortgage bonds, the sums thus received therefor to be considered as paid in cash on account of the said purchase-money, the said bonds and coupons to be delivered to the said William S. Hassell, trustee, and to be returned by him to the holders, after the dividends thus receipted for shall have been endorsed thereon. In case the purchaser or purchasers shall have paid any part of the purchase-money in first-mortgage bonds, as aforesaid, and it shall appear, upon distribution of the proceeds of sale, that creditors having liens prior to the first-mortgage bonds are entitled to be paid out of the said balance of the purchase-money, then the purchaser or purchasers shall pay in cash to the said William S. Hassell, trustee, the balance of the said purchase-money, or so much thereof as shall be necessary to pay said liens.

In case the terms of sale are not complied with by the bidder to whom the property shall have been struck off, the next highest bidder at the sale, who shall have signed the conditions thereof, shall have the option of taking the property at his bid, upon paying or accounting in the manner aforesaid for the amount thereof within ten days after the expiration of the aforesaid thirty
104 days from *from* the date of sale.

When the purchase-money shall have been paid and receipted for as above, and the sale confirmed by the court, the said William S. Hassell, trustee, will make a delivery to the purchaser or purchasers, and by good and sufficient deed or deeds convey unto

him or them, in fee-simple, the property purchased by him or them free of incumbrance.

The above and foregoing form of advertisement approved.

DON. A. PARDEE, *Judge.*

Resolutions of the Board of Directors of the Rio Grande and Pecos Railway Company,

Circuit Court of the United States for the Western District of Texas.
—— Term.

C. B. WRIGHT
vs.
THE RIO GRANDE AND PECOS RAILWAY COMPANY and MERCANTILE TRUST CO. of New York. } No. —.

Resolutions passed by the board of directors of the Rio Grande and Pecos Railway Company, October 7th, 1884, appointing William S. Hassell, of Philadelphia, trustee under its mortgages and consenting to a foreclosure under the first mortgage.

Resolved, That the Rio Grande and Pecos Railway Company
105 do hereby remove the Mercantile Trust Company from its office of trustee under first and second mortgages of this company, and appoint William S. Hassell, of Philadelphia, trustee in its stead.

Resolved, That the president of this company is authorized to consent on behalf of the company to the decree of foreclosure prepared by bondholders and trustee and have the same entered of record.

By order of the board.

——— ———,
President.

PHILADELPHIA, *October* 9, 1884.

We, the undersigned holders of a majority of the total issue of six hundred thousand dollars of bonds issued and secured by the first mortgage of the Rio Grande and Pecos Railway Company, do hereby consent to the removal of the Mercantile Trust Company of New York, the existing trustees under the said first mortgage, and consent to and approve of the appointment by the said company, under the authority conferred upon them by article X of said mortgage, of William S. Hassell, Esq., of Philadelphia, to be and act as trustee under said mortgage.

Names and Amounts Held by Bondholders.

	Amount of bonds held.
C. B. Wright, one hundred & twenty-three thousand	$123,000
Jay Cooke — Jay Cooke, Jr., one hundred & twenty-five thousand	125,000
Jay Cooke, Jr., seventeen	17,000
Jay Cooke, Jr., for H. D. Cooke & Co., forty-two	42,000
Jay Cooke, Jr., for W. S. Fox, three	3,000
Total	$310,000

Acceptance of Office of Trustee.

I, William S. Hassell, of Philadelphia, do hereby accept the office of trustee under the mortgages of the Rio Grande and Pecos Railway Company.

WM. S. HASSELL.

106 On the 9th day of October, A. D. 1884, before me, the subscriber, a notary public of the Commonwealth of Pennsylvania, personally appeared the above-named William S. Hassall, who acknowledged the above acceptance of trust to be his act and deed, and the signature thereto to be his signature.

Witness my hand and seal.

[SEAL.] HENRY POLSZ,
Notary Public.

Endorsed: Wright *et al. vs.* Rio Grande and Pecos Railway Co. Decree. Filed Oct. 20, 1884. W. C. Robards, clerk, by D. West, dep. Geo. Biddle, A. Sidney Biddle, attorneys-at-law, 208 south fifth street, Philadelphia.

Decree as to A. W. Wilcox, Claim No. 1. Filed Nov. 6, 1884.

In the Circuit Court of the United States for the Fifth Circuit and Western District of Texas, at San Antonio. In Equity.

C. B. WRIGHT *et al.*
vs.
RIO GRANDE & PECOS RAILWAY CO., *et al.* } No. 24.

OCTOBER 31, 1884.

107 And now on this day in open court, came on to be heard the exception of A. W. Wilcox to so much of the report of S. G. Newton, Esq., special master, filed herein September 27th, 1884, as relates to the claim of said Wilcox, designated in said report as claim No. 1, and the court having read and considered the said report and the exhibits and evidence accompanying the same, together with the exceptions to said report, and having heard argument of counsel in favor of and against said exceptions, doth order, adjudge, and decree, that the said exceptions be allowed, and doth order and direct, that said claim of the said A. W. Wilcox, to wit, the sum of five thousand and five hundred and twenty-six dollars and seventy-eight cents, ($5,526.78), with interest thereon from January 13th, 1884, at the rate of ten per cent. (10) per annum, to be paid by H. Cavalier Smith, the receiver of said railroad, out of any proceeds in his hands accruing from the sale of receiver's certificates, which he was heretofore ordered to issue, if there be any such proceeds in his hands, not absolutely necessary to pay the actual running expenses of the said road, and if there be no such proceeds, the said H. Cavalier Smith, receiver as aforesaid, is directed either to sell enough of said certificates, to pay said claim, and out of the proceeds to pay the same, or if the said Wilcox consents to take such certificates in lieu of money, he will issue and deliver to said Wilcox, enough of said receiver's certificates to cover his claim.

108 It is further ordered that if the said H. Cavalier Smith, receiver, as aforesaid, has no funds to apply to said claim and can realize none from the sale of said certificates, and the said Wilcox declines to take such certificates, then that the trustee or other person who may hereafter make sale of said road shall pay said claim out of the proceeds of sale, and the said claim shall stand as a charge and first lien on said proceeds to be paid in like manner as the receiver's certificates heretofore ordered to be issued.

Ordered and decreed in open court this the sixth day of November, A. D 1884.

E. B. TURNER, *Judge.*

Endorsed: No. 24. C. B. Wright vs. R. G. & P. R. R. Co. Decree as to claim No. 1. A. W. Wilcox. Filed Nov. 6, 1884. W. C. Robards, clerk, by D. West, dep.

109 *Petition for Rehearing in Claim No. 1, A. W. Wilcox. Filed Dec. 6, 1884.*

Circuit Court United States, Western District of Texas. In Chancery.

C. B. WRIGHT *et al.*
vs.
RIO GRANDE AND PECOS R'W'Y CO. *et al.*

To the Hons. Don A. Pardee and E. B. Turner, judges of said court:

The petition of C. B. Wright, complainant in said cause, and William S. Hassall, trustee of all the first mortgage bondholders of said defendant railway, respectfully represents:

That it appears from the record in the above-entitled cause that this court on the 6th day of November, 1884, heard the exceptions filed by A. W. Wilcox to the report of the master, S. G. Newton, and made an interlocutory order thereupon declaring that said Wilcox had a lien upon the proceeds of said railroad; that the same be sold prior to that of the first mortgage bondholders aforesaid, and equal in degree to that of the holders of receiver's certificates issued in this behalf, and further directing that the receiver issue receiver's certificates for the full amount of said claim. And so your petitioner pray this honorable court [to] grant them a rehearing of said claim and the exception thereto before the court in banc.

110 1st. Because there are seventy-seven (77) claims presented to the master, amounting in all to about $52,000.00, and other decissions of many of such claims depends upon the action of this court upon said claim.

2. Because over $3,900 of said claims was for loans and articles of merchandise furnished by said Wilcox to the Rio Grande & Pecos Railway Company and for articles embraced in the intent of the act of 1879 in such cases made and provided, nor protected by the several principals of equity.

3. Because it appears from the evidence that the said claimant took a note with a warranty of attorney to confess judgment, but

without any authority to give a lien prior to that of the said bondholders, and the judgment of the State courts of Texas upon said note does not give a prior lien to that of said bondholders.

4. Because the taking of said note by said claimant operated and was a waiver of any lien, if any theretofore he had.

5. Because the taking of the said note, part of which might theretofore [have] been secured by liens and for an entire amount embracing such secured portion and other matter of accounts entirely unsecured operated a waiver of the secured portion.

6. Because it appears, from the evidence, that the note upon which the claim was predicated was given for an account between the claimant and Gov. A. C. Hunt, and constituted a claim
111 against said Hunt, and never was a claim against said defendant railroad.

7. Because it appears that the basis of said note—that is to say, the general statement of accounts for the balance due upon which said note was executed and delivered—embrace, besides time-checks due by said railroad, matters of general and individual account between said claimant, said Hunt, and said Rio Grande and Pecos Railway Company; that general credits were from time [to time] — upon said entire account without particularly application to any part thereof, and that the balance apparently upon said accounts, after deducting said general credits from said entire account, embracing, as aforesaid, all said items of accounts, was the balance for which said note was given; wherefore if ever a lien existed for any part of said account the same was waived thereby for such portion.

And petitioner- pray for general relief, and they will ever pray, &c.

GEORGE BIDDLE,
WM. AUBRY,
Solicitors for Petitioners.

Endorsed: No. 24. C. B. Wright *et al. vs.* The R. G. & P. R'w'y Co. Petition for the rehearing on claim of A. W. Wilcox. "Allowed to be filed and ordered over until hearing of exceptions in the cases before the master. Don A. Pardu, judge." Filed Dec. 6, 1884. W. C. Robards, clerk, by D. West, deputy.

112 *Order Convening Special Term of the Circuit Court of the United States.*

Fifth Judicial District, Western District of Texas.

AUSTIN, TEXAS, *December* 3, 1884.

A special term of the circuit court of the United States for the western district of Texas is hereby ordered to be convened and held at San Antonio, Texas, on Wednesday, the 10th day of December, 1884, at 9 o'clock a. m., at which term all such business may be transacted as is allowed by section 670, Revised Statutes.

The clerk of the court will give notice by advertisement in some

daily newspaper published in San Antonio up to the said date, Dec. 10th.

Witness my hand.

DON A. PARDEE,
Circuit Judge.

113 *Convening of a Special Term of the Circuit Court of the United States at San Antonio.*

From Minutes of said court, page 447.

In pursuance of the foregoing order the circuit court of the United States for the fifth judicial circuit and western district of Texas met in San Antonio, at a special term, due notice thereof having been given as required in said order—present and presiding, the Hon. Don A. Pardee, judge of said court, Hal L. Gosling, U. S. marshal, and W. C. Robards, clerk—when the following proceedings were had and determined, to wit:

114 *Order Modifying Decree of Nov. 6, 1884. Filed Dec. 7, 1884.*

Circuit Court of the United States for the Western District of Texas.

WRIGHT *vs.* THE RIO GRANDE AND PECOS RAILWAY CO. *et al.*

And on Wednesday, Dec. 3, 1884, on motion of Messrs. Geo. Biddle and Wm. Aubrey, of counsel for the defendants, the court grant a rule to show cause why the interlocutory order granted Nov. 6, 1884, ordering the receiver to pay the claim of Dr. A. W. Wilcox out of any monies in his hands, or to issue receiver's certificates to said Dr. Wilcox, and the interlocutory order of Nov. 14, 1884, varying and modifying the order of the circuit court providing for the sale of the railroad company free from all liens and encumbrances, be themselves modified so as to allow a sale of the railroad and property belonging thereto free of all encumbrances and rescinding said order of Nov. 6th, so far as it orders the payment of any claim out of the proceeds of receiver's certificates or the issue of said certificates.

DON A. PARDEE, *Judge.*

Dec. 3, 1884.

Endorsed: C. B. Wright *et al. vs.* R. G. & P. R. R. Co. *et al.* Decree. Filed Dec. 7, 1884. W. C. Robards, clerk, by D. West, dep.

115 *Decree Ordering a New Sale of the Railroad. Filed Dec. 10, 1884.*

Circuit Court of the United States for the Western District of Texas, at San Antonio, Texas. Special Term, Dec., 1884. In Chancery.

C. B. WRIGHT *et als.*
vs.
THE RIO GRANDE AND PECOS RAILWAY COMPANY. } No. 24.

And now, Wednesday, December 10th, 1884, at a special term of the circuit court of the United States for this district, held this day

under a special order of the circuit judge, of the fifth judicial circuit, made on the third day of December, 1884, on motion of William Aubrey, Esq'r, of counsel for the plaintiff, C. B. Wright, and others, and George Biddle, Esq'r, for said plaintiff, and for W. S Hassell, trustee under the first mortgage of the Rio Grande and Pecos Railway Company, with full notice to the counsel of the creditors of said railroad, by writs in the nature of *scire facias*, and after argument of counsel, J. H. McLeary and A. G. Teeler, Esq'r, appearing in court for M. M. Buck & Co., W. R. Showallir, Esq'r, H. G. Dickenson, Esq'r, O. M. Watkins, Esq'r, for persons creditors, or claiming to be creditors, of the said railway defendant, parties to the record of this case, and A. J. Peeler, Esq'r, representing A. W. Wilcox, also a creditor, or claiming also to be, of said defendant, H. C. Smith, Esq'r, receiver,

116 appearing in court personally, and it appearing by the accounts of the receiver, heretofore filed, that the said corporation defendant is not and has not been for some months past able to earn its running expenses, and a considerable amount of receiver's certificates have been already issued, amounting *to* the aggregate to about $50,000, and it does not appear that the property can be made to pay its expenses, unless further large and expensive developments are made in the vicinity, which the bondholders and other parties interested therein have not consented or offered to do;

And whereas it appears by the report of the special master hereinbefore appointed to report upon all claims whatever against said defendant, or said property, that he has duly advertised his appointment from the 30th of June, 1884, and that by his report filed on the 27th of September, 1884, claims to the amount of fifty-two thousand three hundred and ninety-one $\frac{84}{100}$ dollars ($52,391.84) have been presented before him, of which eleven thousand seven hundred and forty-five $\frac{56}{100}$ dollars ($11,745.56) have been allowed, and the balance rejected by him, and exceptions to said report have been filed, and are still pending;

And whereas it further appears to the court that, unless an immediate sale of the railway and other property of the said

117 defendant is ordered, *that* its operations will have to be stopped, whereby the value of the property may be greatly deteriorated, and that the sum of one hundred thousand dollars will cover the amount of the receiver certificates heretofore issued by and under the order of this court, and also all of the claims of creditors claiming before the master heretofore appointed by this court, and whose claims have been reported by him in his report filed Sept. 27, 1884, or nearly so, and it not appearing that any other person interested in the said property is willing to guarrantee a bid of that or more than that amount; and it appearing by *by* the offer of the counsel of the first mortgage bondholders that they are willing, in case the property is forthwith exposed to sale free of and unincumbered of all liens whatsoever, to bid the sum of one hundred thousand dollars; and it appearing to the court that a sale under the present decree of the court would be at the present time impracticable:

Now, therefore, it is hereby ordered and decreed that all of the

railroad and property of the defendant mentioned in the decree heretofore made by this court, bearing date October thirteenth, 1884, and filed October 20, 1884, be sold in the place and in the manner pointed out by said decree and under the same, and subject in all respects whatever thereto, under and by virtue of the ad-
118 vertisement in the *in the* New York World which has been heretofore made and continued since November 17th last, with notice therein since that date that said sale would be postponed until December 17th, and that the said decree stand and be of full and binding force in all respects as the decree of this court, saving and excepting as follows, to wit: That the said sale shall take place on the seventeenth d'y of December of this year, 1884, and that the sum of at least one hundred thousand dollars shall be bid by some responsible party or parties, who shall be satisfactory for said sum to this court, or on whose behalf due security for said sum shall be offered and accepted by this court, and all orders or order at variance herewith are set aside.

Witness the honorable the judges of the circuit court of the fifth judicial district of the United States, this tenth day of December, anno Domini one thousand eight hundred and eighty-four, at San Antonio, Texas.

DON A. PARDEE, *Judge.*

Endorsed: No. 24. C. B. Wright *et al. vs.* Rio Grande & Pecos Railway Co. Decree. Filed Dec. 10, 1884. W. C. Robards, clerk.

119 *Sale Confirmed. Amended Decree & Consolidation of Claims.*

From Minutes of the Circuit Court of the United States at San Antonio, page 485.

C. B. Wright *et als.*
vs.
The Rio Grande and Pecos Railway Company, The Mercant-e Trust Company, and Others. } No. 24.

Tuesday, *May 19th*, 1885.

This cause came on to be further heard at this term, and, it appearing that the sale ordered at a previous term of the court of the property, road mines, lands, and franchises of the Rio Grande and Pecos Railway Company, as described in the complaint in this case, has been duly made as ordered, and though sufficient time has been allowed no party has objected to said sale, and that C. B. Wright, Esqr., is the purchaser, it is ordered and decreed that said sale be, and is hereby, ratified and confirmed.

And now, Tuesday, May 19th, 1885, on the hearing of exceptions to the report of Master Newton, filed by all of the said exceptants thereto, and after hearing the argument of counsel upon said exceptions, the court further orders and decrees:

That the report of the said master upon all of the claims therein referred to, claiming priority on the property of the said company over the lien of the first-mortgage bondholders thereof and of the

mortgage securing the same, be, and are hereby, consolidated,
120 and said report as consolidated be hereby amended so as to allow the following claims to the following parties, and as liens prior to the liens of the first mortgage upon the road and property of the Rio Grande and Pecos Railway Company, viz:

Claims Allowed as First Liens.

Nos.	Names of claimant.	Amount of lien allowed.
1	A. W. Wilcox	$5,526 78
5	C. Burley	141 47
6	S. Mabritas	12 50
8	P. Whitelaw	199 00
9	R. Handel	252 35
11	J. Barnett	148 95
13	James Wertherman	135 70
16	Milmo National Bank	1,907 59
17	E. Miller	787 50
19	F. Commons	222 93
20	George H. Ward	303 63
21	T. J. Brown	124 00
22	William Patts	436 55
23	E. L. Scott	323 50
24	Daniel McCarty	375 00
25	J. De Armand	365 20
26	A. Gallilee	195 00
27	M. Grimes	46 87
32	J. B. Alexander	65 85
37	H. Douglass	54 86
38	J. S. Bartlett	3,695 45
40	W. J. Elmore	60 00
	41 Thomas Supelvedor	14 00
121	42 Francisco Juarez	37 00
	47 Ben Brown	40 69
48	José Armegal	2,214 72
49	Teresa Spinelli	51 00
51	A. W. Wilcox	79 50
57	F. Flores	13 50
63	E. R. Tarver	14 63
65	N. B. Pace	161 94
66	A. W. Wilcox	3 50
69	W. S. Gilliam	13 20
70	Juan Otemo	50 20
71	Leon Bayne	32 37
31	J. B. Alexander	250 41
72	J. P. Hodges	318 45
73	H. Hein	231 80
82	Grant & Co.	53 86
83	J. W. Fowler	192 00
	Making in all	$19,043 45

With interest on each of the said several claims thus allowed from the day that each one of said several liens was contracted, respectively, at eight per cent. per annum; and that the said master's report as thus consolidated and amended be, and the same is hereby, confirmed, and the exceptions thereto of each and every one of said exceptants be, and they are hereby, overruled and dismissed with costs to the respective exceptors in every one of said claims where the master's report has not been changed or amended in favor of the exceptants.

122 And that the application of the complainants in this cause for a rehearing of the decree heretofore rendered upon the claim of A. W. Wilcox, given at the November term of this court of 1884 be, and it is, rejected and referred, with costs.

And it is hereby further ordered that, after the payment of the amount of the receiver's certificates and interest therein heretofore allowed and ordered to be issued by this court, with interest thereon as therein stipulated, at 8 per cent., from the fund realized out of the proceeds of the sale of said Rio Grande and Pecos Railway Company, *that* out of the balance of said proceeds the amount hereinbefore awarded be paid by said W. S. Hassall, trustee, with interest as aforesaid, and cost as hereinbefore ordered, on or before the first day of June, 1885; and, further, that upon due return of said trustee, W. S. Hassall, the balance, after paying of costs, be distributed by the said trustee for the use and benefit of the bondholders represented by him, provided they give security to the satisfaction of Master Newton in the sum of twenty-five thousand dollars ($25,000.00) to pay to Mrs. Emma Huberich such sum as may be awarded by this court on the claim against the receiver now pending and referred to Master Newton, and if said security be not given the said

123 trustee shall pay twenty-five hundred dollars into the registry of the court to await the action of the court, and that the said trustee be ordered to execute a proper conveyance for the railroad and property and appurtenances thereto sold at the judicial sale as aforesaid to Charles B. Wright, the purchaser, on or before the said tenth day of June, 1885; and that upon the due execution and acknowledgment of the same before any officer authorized under the the laws of the State of Texas to take such acknowledgments, said railroad and property and appurtenances thereto to deliver unto said purchaser.

And it is hereby further ordered that Master S. G. Newton be allowed a further sum to that already allowed of six hundred dollars in full for all his services as special master herein, the same to be paid and taxed as part of the costs; and that upon the approval of the receiver's accounts now in the hands of or referred to the master, and of his final account on turning over the property to the purchaser, as hereinbefore provided, the receiver shall be discharged.

And it is further ordered that should any of the parties, except William Hassall, trustee aforesaid, appeal, shall be allowed as

124 a supercedeas upon such parties entering due security in the cause satisfactory to one of the judges of this court and filing the bond with the clerk of the court for fifty per cent. of the amount

of money in the hands of said trustee, being the balance of the purchase-money of said railroad and property sold by him as shall, by reason of such appeal be tied up, and if requested by either party said Master Newton shall report fully the facts as to any appeal for its action thereon.

And should said Hassall, trustee, appeal from said decree or any part thereof, said appeal shall be allowed as a supersedeas upon his entering security for the principal sum involved in said appeal and fifty per cent. additional in like manner, and in all respects as above provided.

125 *Decree Confirming Sale. Filed Feb'y* 28, 1885.

Circuit Court of the United States for the Western District of Texas.
Term No. —.

C. B. WRIGHT
vs.
THE RIO GRANDE AND PECOS RAILWAY COMPANY.

And now, February 25th, 1885, on motion of John James Wilkinson, Esq'r, of counsel for William S. Hassall, trustee under the first mortgage of the Rio Grande and Pecos Railway Company, bearing date June —, 1882, it is hereby ordered and decreed—

1. That the return made by the said W. S. Hassell, bearing date the 18th February, 1885, to the order of sale, together with the proofs of publication of notice of said sale accompanying the same, be ordered to be filed in the office of the clerk of the court at San Antonio, T'xas.

2. That unless exceptions shall be filed to the said return on or before 10th March, 1885, unless the time shall be previously enlarged by one of the judges by parties in interest entitled to file exceptions to the same, the said returns shall be approved, and the said Charles B. Wright, who appears by the said return to be
126 the purchaser of the said property at the sale, be thereupon ordered forthwith to pay to Wm. S. Hassall, trustee as aforesaid, the balance of purchase-money, to wit, the sum of $75,000, according to the terms and conditions of the order and decree of sale made by this court, dated October, 1884, and December 10th, 1884.

3. That thereupon and upon the payment by the said Charles B. Wright of the balance of the purchase money as aforesaid to the said William S. Hassall, trustee, that the sale of the said Rio Grande and Pecos Railway Company and its property and appurtenances set forth in the aforesaid decrees to the said Charles B. Wright, the purchaser aforesaid be, and the same shall then be confirmed absolutely.

DON A. PARDEE, *Judge.*

Endorsed: No. 24. C. B. Wright *vs.* Rio Grande and Pecos Railway Company. Decree confirming Sale. Filed Feb'y 28, 1885. W. C. Robards, clerk.

127 *Appeal. Filed June 18th, 1885.*

In the Circuit Court of the United States for the Western District of Texas, sitting at San Antonio. In Equity.

Between—

C. B. WRIGHT, a Citizen of the State of Pennsylvania, Complainant, and Wilson S. Hassall, Trustee, a citizen of the State of Pennsylvania, admitted as an Intervening Party Complainant,

and

THE RIO GRANDE AND PECOS RAILWAY COMPANY, a Corporation Created by and Existing under the Laws of the State of Texas, of October Term, A. D. 1884.

} No. 24.

The above-named complainant, William S. Hassall, trustee, conceiving himself aggrieved by the final decree entered on the 19th day of May, 1885, in the above-entitled cause, doth hereby appeal therefrom to the Supreme Court of the United States, and he prays that this, his appeal, may be allowed, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the Supreme Court.

WM. S. HASSALL.

Endorsed: 24 Oct., 1884. Equity. Wright *et al. vs.* Rio Grande & Pecos R. R. Co. Appeal of W. S. Hassall, trustee, to U. S. Supreme Court. Allowed. Don A. Pardee, judge. June 16, 1885. Filed June 18, 1885. W. C. Robards, clerk.

128 *Appeal Bond. Filed June 18th, 1885.*

In the Circuit Court of the United States for the Western District of Texas, sitting at San Antonio. Of October Term. In Equity.

Between—

C. B. WRIGHT, a citizen of the State of Pennsylvania, Complainant, and William S. Hassall, Trustee, a citizen of the State of Pennsylvania, admitted by order of said court as an Intervening Party Complainant,

and

THE RIO GRANDE AND PECOS RAILWAY COMPANY, a corporation created by and existing under the laws of the State of Texas, Defendant.

Know all men by these presents that we, William S. Hassall, trustee, of Philadelphia, Pennsylvania, Jay Cooke and C. B. Wright, of same place, are held and firmly bound unto A. W. Wilcox, C. Burley, S. Mabritas, P. Whitelaw, R. Handel, J. Barnett, Jos. Wetherman, Milmo National Bank, E. Miller, F. Commons, George H. Ward, T. J. Brown, William Potts, E. L. Scott, Daniel McCarty, J. De Armand, A. Gallilee, M. Grimes, J. B. Alexander, H. Douglass, J. S. Bartlett, W. J. Ellmore, Thomas Supelvedo, Francisco Juarez, Ben. Brown, José Armengol, Theresa Spinelli, A. W. Wilcox, F.

Flores, E. R. Tarver, N. B. Pace, A. W. Wilcox, N. S. Gilliam,
129 Juan Ottima, Leon Boyne, J. B. Alexander, J. T. Hodges, H. Hein, Grant & Co., and J. W. Fowler, of the State of Texas, and M. M. Buck, of Missouri, in the sum of thirty thousand dollars, lawful money of the United States, to be paid to the said A. W. Wilcox, C. Burley, S. Mabritas, P. Whitelaw, R. Handel, L. Barnett, Jos. Wetherman, Milmo National Bank, E. Miller, F. Commons, George H. Ward, T. J. Brown, William Potts, E. L. Scott, Daniel McCarty, J. De Armand, A. Gallilee, M. Grimes, J. B. Alexander, H. Douglass, J. S. Bartlett, W. J. Ellmore, Tomas Supilvedo, Francesco Juares, Ben. Brown, José Armengol, Theresa Spinelli, A. W. Wilcox, F. Flores, E. R. Tarver, N. B. Pace, A. W. Wilcox, W. S. Gilliam, Juan Ottima, Leon Boyne, J. B. Alexander, J. T. Hodges, H. Hein, Grant & Co., J. W. Fowler, and M. M. Buck, their respective executors and administrators, to which payment, well and truly to be made, we do bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, dated this 13th day of June, 1885.

Whereas the above-named William S. Hassall, trustee, hath taken an appeal to the Supreme Court of the United States to reverse the decree entered in the above-entitled cause by the circuit court of the United States for the western district of Texas:

130 Now, therefore, the condition of this obligation is such, that if the above named William S. Hassall, trustee, shall prosecute his said appeal to effect, and answer all costs and damages, if he shall fail to make good his plea, then this obligation to be void; otherwise to remain in full force and virtue

WM. S. HASSALL. [WAFER SEAL.]
JAY COOKE. [WAFER SEAL.]
C. B. WRIGHT. [WAFER SEAL.]

Sealed and delivered in the presence of—
W. G. CLARK,
As to W. S. H.
J. J. WILKINSON,
As to J. C. & W. H. H.
J. A. JACOBS,
As to C. B. W.
WM. GOODWIN,
As to C. B. W.

UNITED STATES OF AMERICA:

Wm. S. Hassall being duly sworn, deposes and says: That he is worth the sum of thirty thousand dollars over and above all his just debts and liabilities.

Affirmed to before me this 13th day of June, 1885.

JOHN J. WILKINSON,
Notary Public.

New Orleans, La., June 16, 1885. Bond accepted.

DON A. PARDEE, *Judge.*

Endorsed: 24 October, 1884. Equity. Wright *et al. vs.* Rio Grande & Pecos R. R. Co. C. C. U. S., W. D. of Texas. Bond for appeal of W. S. Hassall, trustee, to S. C. U. S. Filed June 18, 1885. W. C. Robards, clerk.

131 *Citation.*

In the Circuit Court of the United States for the Western District of Texas, sitting at San Antonio. Of October Term, A. D. 1884. In Equity.

Between—

C. B. WRIGHT, a citizen of the State of Pennsylvania, Complainant, and William S. Hassell, trustee, also a citizen of the State of Pennsylvania, admitted by order of the court as an Intervening Party Complainant,
and
THE RIO GRANDE AND PECOS RAILWAY COMPANY, a Corporation Created by and Existing under the Laws of the State of Texas, Defendant. } No. 24.

UNITED STATES OF AMERICA, *ss:*

To Charles B. Wright, The Rio Grande and Pecos Railway Company, The Mercantile Trust Company, William S. Hassell, A. W. Wilcox, C. Burley, S. Mabritas, P. Whitelaw, R. Handel, I. Barnett, Jos. Wetherman, Milmo National Bank, E. Miller, F. I. Commons, George H. Ward, T. J. Brown, William Potts, E. L. Scott, Daniel McCarty, J. De Armand, A. Gallilee, M. Grimes, J. B. Alexander, H. Douglass, J. S. Bartlett, W. J. Ellmore, Thomas Sapel-
132 vedo, Francisco Juarez, Ben. Brown, José Armingol, Theresa Spinelli, A. W. Wilcox, F. Flores, E. R. Taner, N. B. Pace, A. W. Wilcox, W. S. Gilliam, Juan Ottima, Leon Bayne, J. B. Alexander, J. T. Hodges, H. Hein, Grant & Co., and L. W. Fowler, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in October next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the western district of Texas, wherein William S. Hassall, trustee, is appellant, and The Rio Grande and Pecos Railway Company, and other parties intervening, are appellees, to show cause, if any they have, why the judgment in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 16th day of June, in the year of our Lord one thousand eight hundred and eighty-five.

[SEAL.] DON A. PARDEE, *Judge.*

Attest:

W. C. ROBARDS, *Clerk.*

133 *Marshal's Return.*

U. S. Marshal Office, Western District of Texas.

SAN ANTONIO, TEXAS, *July* 28, 1885.

Received this writ at San Antonio, Texas, June 24, 1885, and executed same day by delivering to each of the following named persons in person a true copy of this writ on the dates and at the places stated below, viz:

To The Rio Grande and Pecos Railway Company, on Wm. Sharp, secretary, at Laredo, July 7th, 1885.

To Broadwater & Dickerson, solicitors for S. Mabritas, N. H. Douglass, and J. S. Bartlett, at Laredo, July 7th, 1885.

To Shawalter & Nicholson, solicitors for Milmo National Bank, E. Miller, F. Commons, George H. Ward, T. J. Brown, Wm. Potts, E. L. Scott, Daniel McCarty, J. De Armand, A. Gallilee, M. Grimes, J. B. Alexander, Thomas Supelvedo, Francisco Juarez, José Armingol, Theresa Spinnelli, Ben. Brown, at Laredo, July 1, 1885.

To O. M. Walkins, solicitor for N. B. Pace, H. Hein, J. T. Hodges, at Laredo, June 27, 1885.

To C. Busby, at Laredo, June 27, 1885.

To P. Whitelaw, at Coal Mines, July 21, 1885.

To R. Handel, at Laredo, June 29, 1885.

To J. Barnett, at Laredo, July 21, 1885.

To Jos. Witherman, at Laredo, June 27, 1885.

To W. J. Ellmore, at Laredo, July 7, 1885.

To F. Flores, at Laredo, July 21, 1885.

134 To E. R. Taner, at Laredo, June 29, 1885.

To W. S. Guilliam, at Laredo, June 29, 1885.

To Juan Ottima, at Laredo, June 27, 1885.

To Leon Bayne, at Laredo, June 27, 1885.

To Grant & Company, at Laredo, June 29, 1885.

To J. W. Fowler, at Laredo, July 1, 1885.

Above service performed by Deputy Geo. A. Fowle, and further executed as to A. W. Wilcox by delivering to A. J. Peeler, his solicitor of record, in person a true copy hereof.

S. D. JACKMAN,
U. S. Marshal,
By B. G. DUVAL AND
GEO. A. FOWLE,
Deputies.

GEO. A. FOWLE.

Citation on Appeal.

C. B. WRIGHT & Co.
vs.
THE RIO GRANDE AND PECOS RAILWAY COMPANY. } No. 24. In Equity.

1880.

June	24.	Received citation at San Antonio, and executed as follows:	
July	7.	Wm. Sharp, secretary R. G. & P. R'w'y Co.	$2 00
		Broadwater & Dickerson	2 00
	1.	Shawalter & Nickalson	2 00
June	27.	O. M. Watkins	2 00
"	"	C. Busby	2 00
July	21.	P. Whitelaw	2 00
135			
June	29.	R. Handel	2 00
July	21.	J. Barnett	2 00
June	27.	Jos. Witherman	2 00
July	7.	W. J. Ellmore	2 00
	21.	F. Flores	2 00
June	29.	E. R. Taner	2 00
	"	W. S. Gilliam	2 00
	27.	Juan Ottema	2 00
	"	Leon Bayne	2 00
	29.	Grant & Co.	2 00
July	1.	J. W. Fowler	2 00
		Travel being 5 trips from San Antonio to Laredo, 155 miles each trip one way, at 6 cents per mile	46 50
			$80 50
		B. G. Duval:	
July	3.	A. J. Peeler, Austin	2 00
		81 miles, @ 6 c.	4 86
		Total costs	$87 36

I certify that the above bill of cost- is correct.

S. D. JACKMAN,
U. S. Marshal.

I acknowledge service of the within writ, and waive copy hereof, this July 28th, 1885.

C. B. WRIGHT.
By his Attorney, WM. AUBREY.

Endorsed: No. 24. Oct., 1884. Equity. C. B. Wright *et al. vs.* Rio Grande & Pecos R'y Co. Citation. Appeal of Wm. S. Hassell, trustee. U. S. S. C. Filed July 28th, 1885. Wm. C. Robards, clerk.

136 I, W. C. Robards, clerk of the circuit court of the United States for the western district of Texas, at San Antonio, in said district, do hereby certify that the foregoing transcript is a true copy of the record and of the proceedings in the cause of C. B. Wright *et al.* against The Rio Grande and Pecos Railway Company, as far as it relates to the claim of A. W. Wilcox, No. one, against the Rio Grande and Pecos Railway Company, said cause being number twenty-four (No. 24) on the equity docket of said court.

Given under my hand and the seal of said circuit court of the western district of Texas, at San Antonio, in said district, this 21st day of September, A. D. 1884.

[The Seal of the U. S. Circuit Court, Western Dist. Texas, San Antonio.]

W. C. ROBARDS,
Clerk U. S. Circuit C't, West. Dist. Texas.

Endorsed on cover: W. Texas C. C. U. S. No. 1008. William S. Hassall, trustee, appellant, *vs.* A. W. Wilcox *et al.* Filed October 3, 1885.

Office Supreme Court U. S.
FILED.
NOV 16 1885
JAMES H. McKENNEY.
CLERK.

No. 1008.

In the Supreme Court of the United States.

W. S. HASSALL, Trustee,

vs.

A. W. WILCOX, et al.

BRIEF FOR APPELLANT ON MOTIONS TO DISMISS OR AFFIRM.

GEORGE BIDDLE,
For Appellant.

Allen, Lane & Scott, Printers, Nos. 229-231 South Fifth Street, Philadelphia.

In the Supreme Court of the United States.

W. S. Hassall, Trustee,		
vs.		No. 1008.
A. W. Wilcox et al.		

BRIEF FOR APPELLANT ON MOTIONS OF APPELLEES TO DISMISS OR AFFIRM.

This is a motion to dismiss:—

I. On the ground that the amounts involved in the decree appealed from, are not sufficient to give this court jurisdiction; and

II. That the appeal is improperly brought in the name of Hassall, the trustee, and that it is manifest he has no interest in the decree. The appellee, Wilcox, moves the court to dismiss the appeal or affirm the decree as to him, for the reasons stated in the second ground of the motion.

The FACTS of the case are as follows:—

The Rio Grande and Pecos Railway Company, of Texas, had executed a first mortgage upon their entire property to the Mercantile Trust Company, of New York, to secure six hundred bonds of $1000 each, which they had issued. The railroad company having become embarrassed, C. B. Wright, a bondholder, filed a bill on April 16th, 1884, in the Circuit Court for the Western

District of Texas against it, and the trustee under the mortgage, asking for a receiver and praying a foreclosure. A receiver was appointed, and before October, 1884, $50,000 of receiver's certificates were issued to meet existing claims and to run the road. It being impossible to make the receipts meet the running expenses, and the road being utterly insolvent, the Circuit Judge on October 13th, 1884, made a decree declaring that the receiver's certificates should constitute a first lien upon the road; such liens, if any, as might *thereafter* be decreed by the court to have precedence over the first mortgage bondholders, a second lien; and the mortgage itself a third; and ordering the road in default of payment within ten days, to be sold, in New York, after due advertisement. (See Record, page 52.)

Doubts having in the meanwhile arisen whether a foreign corporation could under the law of Texas act as trustee under the mortgage, the bondholders, under a power in the mortgage reserved to them, on October 20th, 1884 substituted in lieu of the Mercantile Trust Company, *William S. Hassall*, who thereupon appeared by counsel and was allowed by the court to be made *party plaintiff in the suit*, as representing the entire body of bondholders. (Record, page 47.)

On November 14th, 1884, an interlocutory order was made by the District Judge

"varying and modifying the order of the Circuit Court, and provid-
"ing for the sale of the railroad, free from all liens and incumbrances,"
"* * and ordering that the road be sold, *subject to the liens and in-*
"*cumbrances*, excepting the receiver's certificates and the first mortgage
"bonds."*

On December 10th, the interlocutory order was rescinded and a new decree made ordering a sale of the road on the same terms as the original decree of October 13th, provided at least $100,000 should be bid at the sale. (Record, page 59.)

On December 17th, the road was sold as required by the decree (page 61). It was not bought in by or for the bondholders as a body; and the statement to this effect on page 9 of the appellee's brief is gratuitous and entirely erroneous.

* This order is not contained in the printed record, but is *recited* as having been made on November 14th, in the subsequent decree of December 10th (Record, page 59), from which recital the above extract is taken.

On May 19th, 1885, the sale was confirmed, and the purchase money, $100,000, came before the court as a fund for distribution.

The court had previously (Record, page 17–18) appointed a master, S. G. Newton, to report upon all claims against the road, and he filed a report showing a large amount of such claims. That these were valid claims against the railroad was not disputed, many of them having actually been reduced to judgment against the railroad company in the State courts.

The parties before the court claiming the fund were:—

The holders of receiver's certificates, amounting, with interest, to about $52,000.

The bondholders, amounting, with interest, to about $637,260.

The claimants against the railroad company before the master.

The court, in accordance with their decree of December 10th, 1884, ordering the sale of the road, ordered the receiver's certificates to be first paid; leaving about $48,000. The bondholders, through Hassall, their trustee, claimed the entire balance. The court refused his claim, and awarded him only about $28,000, distributing the balance, $19,043.45 with interest (see Record, page 62), to A. W. Wilcox, C. Burley, and other claimants who had proved their claims before the master. From this decree, Hassall, the trustee for the bondholders, appealed.

Out of the fund of $100,000 he claimed the balance after the payment of the receiver's certificates ($48,000). There was awarded to him but $28,000. The amount in dispute is therefore about $20,000.

ARGUMENT.

1. It will be convenient to first discuss the *second* ground of the motion to dismiss, viz., that

> "The appeal is improperly brought in the name of Hassall, trustee, "and that it is manifest he has no interest in the decree", (Appellee's brief, page 1.)

so that (appellee's brief, page 8),

> "As to the claim of Wilcox, which is over $5000, Hassall, the trustee, has no right to appeal."

As authority for this extraordinary position, The Farmers Loan and Trust Company *vs.* Waterman, 106 U. S. Rep., 265, is quoted. In that case, in which the Farmers' Loan and Trust Company were trustees under a railroad mortgage, a decree was entered directing a sale of the mortgaged property, and providing that all proceeds should be applied to

> "such claims as should be hereinafter allowed by the court in preference "to the lien of the mortgage."

At the time of this first decree, the amount of these debts for labor and supplies were not known. After a report filed by a special master appointed by the court had been filed, showing an enormous number of claims, the decree was modified and the sale of the road was made

> "subject to such claims and sums of money as are now under consider- "ation by, and shall be hereinafter allowed by, this court, and affirmed "by the Supreme Court of the United States on appeal," * * * * "without prejudice to the Farmers' Loan and Trust Company to object "or to appeal."

The mortgaged property was thus ordered to be sold *subject* to all preference claims, and on October 30th, 1878, it was so sold to "a purchasing committee," in trust for certain bondholders under the trusts expressed in certain agreements. When these liens came to be enforced by the claimants against the property in the hands of the purchasers, exceptions were filed by the trust company and by the purchasers. They

were overruled, and from this decree the trust company, as trustee under the mortgage, and also the purchasing committee, took appeals. All the appellees having claims less than $5000 moved to dismiss the appeals for want of jurisdiction. It was held by this court that no bondholders, *as bondholders*, had any interest whatever in the appeal, either as to the claims over $5000 or under it. As *bondholders*, they were only interested in the actual proceeds of the sale, which were not subject to labor or supply claims, the property having been sold subject to them. Such bondholders as, under arrangement, had become purchasers, were owners of the road, subject by the terms of their purchase, to such claims for railroad supplies as the Circuit Court should confirm. This court said:—

"As the purchasers took the property, subject to the lien, if any there "was, of the back-pay claims, the bondholders, as bondholders, cannot "in any manner be affected by the result of the proceedings to deter- "mine whether such lien exists, and if so, to what extent. * * * "If, by reason of the agreement under which the purchase was made "by the purchasing committee, any of the bondholders secured by the 'mortgages to the trust company are entitled to the share in the pro- "perty, they are for all such purposes represented by the purchasing "committee and not by the mortgage trustee. *The trust created by the "mortgage was fully executed when the foreclosure was complete. After that "the purchasing bondholders became purchasers of the mortgaged property, "and their rights are to be determined accordingly.*"

Of course, said the court, if the bondholders, as bondholders, had no interest in the appeal, the trust company, who represented them, had none. The language above italicized, however, is quoted in the appellee's argument to prove that no mortgage trustee ever has any right to appeal after a foreclosure and sale. No such decision was ever made by this court, nor are the circumstances in the present case at all analogous to those above considered. Here *Hassall*, the trustee, representing $637,260 of bonds and overdue interest, was, during the progress of the cause, substituted as party plaintiff (Record, page 47), and the road sold, free of all incumbrances (see Record, page 61), realizing a fund of $100,000. The trust created by this mortgage was not executed when the foreclosure was complete. The trust created by the mortgage (see Record, page 8, article 4 of the mortgage) in case of a sale was,

"after deducting from the proceeds of such sale just allowances for "all expenses, advances or liabilities, which may have been made or in- "curred by the trustees in operating or maintaining said premises, &c.- " * * to apply the remainder of said proceeds to the payment of "the principal of such foreclosed bonds as may be at that time unpaid, "whether or not the same shall have become due, and for the unpaid "interest which shall at that time have accrued on the unpaid princi- "pal, without discrimination or preference, ratably to the accrued "amount of such principal and interest; and if after satisfaction "thereof, a surplus shall remain, to pay over the same to the company, "&c."

The trustee, *Hassall*, therefore, not only was a proper party to appeal, but *the* proper party. It is true that Charles B. Wright, a bondholder, first filed a bill because the original trustee, the Mercantile Trust Company, a foreign corporation, did not act, never appeared, and its power to act at all under the law of Texas as trustee was considered doubtful. *Hassall*, however, was duly substituted as trustee, and became by leave of the court, party plaintiff in the suit, representing all the bondholders collectively, none of whom, excepting Wright, has ever individually appeared.

2. We will now consider the first ground of the motion to dismiss, which is that the

"amounts involved in the decree appealed from are not sufficient to "give this court jurisdiction."

None of the claimants are creditors of the bondholders. That relation does not exist. These claims, as appears by the report of the special master (Record, page 44), are claims against the Rio Grande and Pecos Railway Company. The relation of debtor and creditor not existing between any of these claimants, the only question before the court was how the fund should be distributed between them.

In all judicial distributions of a fund, where, as here, the amount for distribution is less than the aggregate of the claims presented, every claimant, in one sense, claims against every other. The amount of the recovery by one necessarily affects what is allowed to another. The contention that a claimant, who claims an appropriation to himself of $48,000 and gets only $28,000, cannot appeal, because some of these

claims on the fund are for amounts less than $5000, would in effect prevent any appeal at all, where a large number of the distributees happened to be claimants for small amounts. This may be well illustrated by what was actually the case in the court below, though, as it does not appear of record, it is put merely as a hypothetical illustration. In addition to the claims mentioned in the decree, was a claim by Messrs. Buck & Co., of Missouri, for $60,000 and by a claimant named Sackett for $30,000. Both of these claims, aggregating $90,000 were disallowed. Together with the $20,000 of claims actually allowed by the court, they would have aggregated $110,000, to pay which, after deducting the receiver's certificates there was only $48,000. If the claim of Hassall, the trustee under the mortgage, had been entirely disallowed and the fund divided among those claimants *pro rata*, they would only have got about forty-three per cent., and Buck & Co., who claimed precedence *of all other claimants whatever* excepting receiver's certificates, would have got only $26,000 instead of $60,000, or less than half his claim.

Now, according to the theory propounded in the appellee's brief, although the amount in dispute in Buck's case would have been the difference between that dividend ($26,000) and the entire fund he claimed ($48,000), he could have not appealed excepting as to that part of the fund awarded to claimants, whose claims exceeded $5000. It might well have happened, however, that there were no such claimants. But if Sackett had appealed against the allowance of Buck's claim ($60,000) and had been successful in throwing it out, then as the total of the claims on the fund instead of being $110,000 would have been only $50,000, each claimant would have been paid *nearly in full*, including those whose claims were under $5000, as well as those who were over. In other words, where a fund is distributed among claimants, whose claims exceed the fund, all are affected by the rejection or allowance of any claim, and where the amount recovered by one affects that allowed to every other, the allowance of the appeal depends upon the amount actually and substantially in dispute to the party who takes the appeal.

Any other reasoning would make it impossible in the hypothetical case just put for a claimant of $30,000, whose claim was entirely thrown out, to appeal where the other claims were for less than $5000, although the dividend coming to him might be for a large proportion of his claim.

To illustrate we will assume that in a given case there is a fund of $50,000 for distribution, and that there are

Twenty creditors, s, t, u, v, &c., whose claims are $2500 each, aggregating	$50,000
One creditor A, whose claim is allowed for	50,000
Total allowed	$100,000

And,

One creditor B, whose claim for $50,000 is disallowed.

Then the fund $50,000 is ordered to be distributed among $100,000 of claims, each creditor getting fifty per cent., the smaller, s, t, u, &c., $1250 each, and A $25,000.

But B appeals, as he has an undoubted right to *qua* A: for, if he succeeds, there will be $150,000 of claims against a fund of $50,000, yielding a dividend of thirty-three and one-third per cent., so that A would get only $16,666.66 or $8333.33 less than his present dividend.

B succeeds in his appeal; his claim is allowed. Now, are the original dividends of fifty per cent. to the creditors under $5000, s, t, u, v, &c., to be cut down, or to stand, as originally awarded.

If the appeal is allowed as against all interested in the fund, as we contend, every one would get 33⅓ per cent.:—

The twenty creditors for $2500 each, s, t, u, &c., would get $833.33 each, aggregating	$16,666 66
A would get	16,666 66
B " "	16,666 66
	$50,000 00

But if B can appeal only as against the one other claim of A which happens to be over $5000, and the remainder, against whom no appeal is allowed are paid off, then the $50,000 is ultimately distributed thus:—

Twenty smaller claims, s, t, u, &c., $2500 each, have already been paid off fifty per cent. aggregating.... $25,000
Of all that is left, viz., $25,000
A gets one-half 12,500
making, with B's half..... 12,500
or, of a fund to which all creditors are declared by the court of last resort, *equally* entitled, those for amounts under $5000 get fifty per cent., the larger twenty-five per cent.

The view contended for seems plain upon reason. It is equally so upon authority.

In The Market Co. *vs.* Hoffman, 11 Otto, 112, a number of lessees of market stalls joined in a bill in equity against the Washington Market Company, none of whose claims individually exceeded the statutory limit, yet as the denial of the right claimed by the company was of far greater value than the sum fixed by the amount of any one claim it was held that that was the matter in dispute and the appeal was allowed.

"The first question," says Mr. Justice Strong, "to be determined is "whether the amount in controversy is sufficient to give us jurisdiction "of the appeal; upon this we have no doubt. While it may be true, "that if Hoffman was the sole complainant, the amount in controversy "would be insufficient to justify an appeal either by him or the com- "pany, the case is one of two hundred and six complainants suing "jointly, the decree is a single one in favor of them all, and in denial of "the right claimed by the company, which is of far greater value than the "sum which by the Act of Congress, is the limit below which an appeal "is not allowable. It is averred under oath in the pleadings that the "sale which the company proposes to make, and the court below en- "joined, would have realized to the company more than $60,000. Of "this benefit the decree deprives them. It is very plain, therefore, that "the appeal is one within our jurisdiction."

To the same effect is "The Mamie," 15 Otto, 773. In that case "The Mamie," was a pleasure yacht, conceded to be worth less than $5000; there were thirteen several suits for damages brought against her for sums not exceeding that amount. Under the Act of Congress, however, the owners claimed the right to pay the value of the yacht into court and contest the amount due the several claimants. As the amount the owners would have been deprived of in the aggregate was

$65,000 or more than $60,000 more than they admitted, it was held that this was the measure of the amount in dispute. Moreover, in the case of The Farmers' Loan and Trust Company *vs.* Waterman, this court dismissed the appeal on the very ground that under the circumstances in that case it was *not* the question there of the fund for distribution, so that the amount of the recovery by one was not affected in any manner by what was allowed the other.

"The purchasers," said the court, "have the right to contest each claim "separately. They stand in the same relation to the several claimants "that the shipowners in Oliver *vs.* Alexander, 6 Peters, 143, did to the sea-"men, or the alleged fraudulent grantee in Seaver *vs.* Bigelows, 5 Wall., "208, to the judgment creditors; the several interveners did not, as in "The Connemara, 103 U. S., 754, claim under one and the same title and "it *is* material to the purchasers how much is allowed to each and "every one, for the amount of recovery is not determined by any fixed "sum, but by the aggregate of all the separate sums allowed the several "claimants individually. The amount of the recovery by one is not af-"fected in any manner by what is allowed to another. * * * *There "is no question here of a fund for distribution*, the purchasing com-"mittee bought the roads subject to the liens of the various back pay "and supply claimants, if any such liens existed. The claimants are "seeking to establish and enforce their respective liens. They join in "one suit for that purpose, but both their claims and decrees are sepa-"rate and distinct."

Observe, that the original decree made October 13th, 1884, and afterwards substantially reinstated on December 10th, was in the nature of a final decree, from which, if it had been actually a final one, any party could have appealed. That decree (Record, page 49), declared the order of liens to be, first, receiver's certificates, second, such claims as the court might thereafter decree to have precedence next, and third, the mortgage. If the court had decided that the claims were a first lien before the receiver's certificates, inverting the order of payment to them, the holders of receiver's certificates, aggregating over $50,000 would certainly have appealed; and it could not have been urged as to them that their appeal was against claims under $5000 to which they were subordinated. What they would contest would be the question of precedence of any claims at all over them. The reason that the two decrees of October 13th and December 10th were not actually final, was that there was

no distribution under them. They were treated by the court itself as interlocutory merely.

Any decree, however, declaring the order in which liens shall be paid, where the subordination of any one class to another involves more than $5000, creates, if there be any question of relative precedence, a dispute in which over $5000 is involved.

This is clearly recognized by the Circuit Court, who consolidated the master's report into one entire decree (Record, page 61) and expressly gave all parties a right to appeal not only the rejected claimants, as for example Buck & Co. ($60,000), and Sackett ($30,000) as in the hypothetical case just put, but the Trustee himself (Record, page 64) fixing the amount of security in each category. (Record, page 63).

"Should any of the parties except Hassall, trustee, aforesaid appeal "(it) shall be allowed as a *supersedeas* upon such parties entering due "security in the case, &c., to one of the judges of this court, and file a "bond with the clerk of the court for fifty per cent. of the amount of "the money in the hands of the said trustee, being the balance of said "purchase-money of said railroad and property sold by him, as shall by "reason of such appeal be tied up."

And as to the trustee (Record, page 64).

"And should said Hassall, trustee, appeal from said decree or any "part thereof, said appeal shall be allowed as a *supersedeas* upon his "entering security for the principal sum involved in said appeal and "fifty per cent. additional in like manner and in all respects as above "provided."

For these reasons the motions to dismiss or affirm should not be entertained.

GEORGE BIDDLE,
For Appellant.